

69
No. 385

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.

SHIP "JOSEPH P. THOMAS," SAMUEL
WATTS, ET AL., CLAIMANTS,

Appellants,

vs.

JENS P. JENSEN,

Appellee.

TRANSCRIPT OF RECORD.

Appeal from the District Court of the United States,
Northern District of California.

FILED

AUG 16 1897

Records of General
Court of appeals
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*In the United States Circuit Court of Appeals, for the Ninth
Circuit.*

SHIP "JOSEPH B. THOMAS,"

SAMUEL WATTS, et al., Claimants,

Appellants,

vs.

JENS P. JENSEN,

Appellee.

No. 385.

Stipulation as to Printing.

It is hereby stipulated that in printing the transcript on appeal in the above entitled cause, the following portions of the original transcript on file herein may be omitted:

On page 5 the application and affidavit of the libelant for juratory caution and order thereon may be omitted.

On page 7 the juratory caution entered into by the libelant may be omitted.

On page 15 the order for proclamation and the proclamation may be omitted.

On page 16 omit all introductory matter down to the words "answer of Samuel Watts and others," and in lieu thereof substitute "Style of court and title of cause."

On page 20 omit all introductory matter before the words "Libelant's proofs," and substitute therefor "Style of Court and title of cause."

On page 20, after the words "Libelant's proofs," omit all introductory matter down to the paragraph beginning with "It is agreed that the testimony of the witnesses shall be taken stenographically," etc.

On page 89 omit all introductory matter down to the name "Edward Peterson," and prefix to said name the words, "Deposition of."

On page 104 prefix to the words "Henry Hannun, called for claimant," the words "Deposition of."

On page 112 omit all introductory matter down to the words "Style of court and title of cause."

On pages 127 and 128 omit the notarial certificate.

On page 129 omit the motion and order made on the 18th day of September, 1893, to submit cause on briefs to be filed.

On page 130 omit the motion and order made on the 26th day of September, 1893, to vacate the order submitting the cause on briefs and that the cause be re-opened to take further testimony.

On page 131 omit the stipulation and order made and entered on the 26th day of September, 1894, that the cause be submitted on briefs to be filed.

On page 156 omit the unnecessary formal order entered by the clerk that the libelant recover six thousand dollars gross damages, etc., as this fully appears in the opinion

of the Court and in the final decree entered in accordance therewith.

On page 159 omit the libelant's bill of costs as taxed and filed June 3d, 1897.

On page 160 omit the commissioner's costs as taxed and filed on the 3d day of June, 1897.

On page 161 omit the clerk's costs as taxed and filed on the 3d day of June, 1897.

FRANK P. PRICHARD.

Proctor for Appellee.

ANDROS & FRANK,

Proctors for Appellants.

[Endorsed]: Filed July 27, 1897. F. D. Monckton,
Clerk.

Citation.

UNITED STATES OF AMERICA, ss.

The President of the United States, to Jens P. Jensen,
Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals, for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, on the ninth day of July, 1897, pursuant to an order allowing an appeal duly entered and of record in the clerk's office of the District Court of the

United States, for the Northern District of California, wherein Samuel Watts and others are appellants and you are appellee, to show cause, if any there be, why the decree rendered against the said appellants as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable THOMAS P. HAWLEY, Judge of the United States District Court for the District of Nevada, presiding, this 10th day of June, A. D. 1897.

THOMAS P. HAWLEY,
Judge.

Service of a copy of the within citation acknowledged this 16 day of June, 1897.

his
JENS P. JENSEN. X.
mark.

FRANK PRICHARD,
Proctor for Libelant.

[Endorsed]: Filed June 25th, 1897. Southard Hoffman, Clerk. By J. S. Manley, Deputy Clerk.

*In the District Court of the United States, in and for the
Northern District of California.*

IN ADMIRALTY.

JENS P. JENSEN,

Libelant,

vs.

THE SHIP "JOSEPH B. THOMAS,"

her tackle, apparel and furniture,

Respondent.

Libel.

To the Honorable WILLIAM W. MORROW, Judge of
the District Court of the United States, in and for
the Northern District of California, sitting in Ad-
miralty:

The Libel and Complaint of Jens P. Jensen, of Phila-
delphia, against the American ship "Joseph B. Thomas,"
whereof W. J. Lermond, of Thomaston, Maine, now is or
late was master, against the said ship, her tackle, apparel
and furniture, and against all persons lawfully interven-
ing for their interests therein in a cause of damage for a
personal damage, civil and maritime, showeth:

I.

On April 11th, 1892, the said ship "Joseph B. Thomas" was lying in the river Delaware, alongside of Race street wharf, at the port of Philadelphia, and was being loaded by a stevedore, who had under a contract undertaken to load her cargo. The libelant, who resides at 53 Prime street, in the city of Philadelphia, was a laborer in the employ of said stevedore, and on said last mentioned date, was in the hold of the said ship with the knowledge and permission of the master lawfully engaged as one of the employees of said stevedore in the said work of loading the cargo of said ship.

II.

Between three and four o'clock in the afternoon of the said day, while libelant was lawfully at work in the hold of the said vessel, with the knowledge and permission of the master as aforesaid, a barrel fell through the hatchway of the said vessel down into the hold where the libelant was working, striking him on the head.

III.

The said barrel fell down the said hatchway and upon the libelant as aforesaid in consequence of the negligence of the master of said vessel and of those entrusted by the

owners of the said vessel with the care and management of said vessel.

IV.

By reason of the fall of said barrel upon the libelant as aforesaid, the libelant's skull was fractured, and he sustained such severe injuries, that he was confined in hospital for fifteen weeks, during which time two operations were performed upon him, and he endured very great pain and suffering. By reason of said injury his right side was, and continued to be, paralyzed. Libelant has been unable by reason of his injuries as aforesaid, to perform any work, or earn any wages, and in addition to the pain and suffering, which he has undergone, he has had his earning capacity destroyed, and has sustained permanent injuries to his health and body of the most serious character. Libelant has been damaged thereby and in consequence of the said fall of said barrel and of said injuries in the sum of ten thousand dollars.

V.

That the said ship is an American vessel and is now in the port of San Francisco within the Northern District of California.

VI.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, the libelant prays that process of attachment in due form of law, according to the course of this Honorable Court in causes of admiralty and maritime jurisdiction may issue against the said ship "Joseph B. Thomas," her tackle, apparel and furniture and that the said W. J. Lermond, master, and all other persons having or pretending to have any right, title or interest therein, may be cited to appear and answer all and singular the matters so articulately propounded. And that this Honorable Court will pronounce for the damages aforesaid, with interest and costs, and that the said vessel may be condemned and sold to pay the same, and that the Court will grant to libelant such other and further relief, as in law and justice he may be entitled to receive.

his

JENS P. (X) JENSEN.
mark.

Jens P. Jensen, being unable to write, signed and subscribed the foregoing instrument in my presence by making his mark thereto, and at his request and in his presence I have written his name near his said mark and hereto subscribed my own name as a witness thereto.

[Seal]

WM. W. CRAIG,
U. S. Commissioner, East Dist. of Penna., Phila., Pa.

Sworn and subscribed to before me this twenty-eighth day of September, 1892, by the said Jens P. Jensen.

[Seal]

WM. W. CRAIG,

U. S. Commissioner, East Dist. of Penna., Phila., Pa.

WALTER G. HOLMES,

Proctor for Libelant.

[Endorsed]: Filed Oct. 10th, 1892. Southard Hoffman, Clerk. By J. S. Manley, Deputy Clerk.

[Style of Court—Title and Number of Cause.]

Claim.

To the Honorable WILLIAM W. MORROW, Judge of the District Court of the United States for the Northern District of California.

The claim of Samuel Watts, Alfred Watts, N. J. Meehan, W. M. Hyler, S. B. Starrett, W. J. Lermond, Elizabeth N. Miller, George K. Washburn, Charles H. Washburn, Helen A. Anderson, John N. Brown, Clarence D. Payson, Halver Hyler, Jane G. Fish, John T. Berry, C. W. Lewis, Wm. M. F. Hall, S. C. Jordan, J. B. Thomas, F. L. Richardson, Ambrose Snow, C. C. Black and J. F. Chapman, to the ship J. B. Thomas, her tackle, apparel and furniture, now in the custody of the marshal of the United States for the said Northern District of California, at the suit of Jens P. Jensen, alleges—

That they are the true and bona fide owners of the said ship, her tackle, apparel and furniture, and that no other person is owner thereof.

Wherefore, these claimants pray that this Honorable Court will be pleased to decree a restitution of the same to them, and otherwise right and justice to administer in the premises.

J. F. CHAPMAN,

For Ship and Co-Owners.

ANDROS & FRANK,

Proctors for Claimant.

Northern District of California—ss.

Sworn to before me this 11th day of Oct., A. D. 1892.

JOHN FOUGA,

Comm'r. U. S. Circuit Ct. Nor. Dist. Cal.

[Endorsed]: Filed Oct. 11th, A. D. 1892. Southard Hoffman, Clerk. By J. S. Manley, Deputy Clerk.

Stipulation for Costs.

Whereas, a libel was filed in this Court on the 10th day of Oct. in the year of our Lord one thousand eight hundred and ninety-two, by Jens P. Jensen against the ship "Joseph B. Thomas," etc., for reasons and causes in the said libel mentioned, and whereas said ship "Joseph B. Thomas," etc., has been claimed by Samuel Watts et al., and the said Sam'l Watts et al., and J. G. Levensaler &

J. M. Josselyn, his sureties, parties hereto, hereby consenting and agreeing that in case of default of contumacy on the part of the said claimants or his sureties, execution may issue against their goods, chattels and land for the sum of five hundred dollars.

Now, therefore, it is hereby stipulated and agreed for the benefit of whom it may concern, that the undersigned shall be, and each of them is, bound in the sum of five hundred dollars, conditioned the claimants above named pay all costs and charges that may be awarded against them in any decree by this Court, or, in case of appeal, by the appellate court.

J. F. CHAPMAN,
For Self and Co-Owners,
G. M. JOSSELYN,
J. G. LEVENSALER.

Taken and acknowledged this 11th day of Oct., 1892,
before me.

JOHN FOUGA,
Commissioner United States Circuit Court, Northern
District of California.

Northern District of California—ss.

J. G. Levensaler and G. M. Josselyn, parties to the above stipulation, being duly sworn, do depose and say, each for himself that he is worth the sum of five hundred dollars, over and above all his just debts and liabilities.

G. M. JOSSELYN,
J. G. LEVENSALER.

Sworn to before me this 11th day of Oct., 1892, before me.

JOHN FOUGA,
Commissioner United States Circuit Court, Northern District of California.

Filed the 11th day of Oct., 1892. Southard Hoffman, Clerk. By J. S. Manley, Deputy Clerk.

In the U. S. District Court, Northern District of California.

IN ADMIRALTY.

JENS JENSEN,

vs.

SHIP "J. B. THOMAS," etc.

SAMUEL WATTS et al., Claimants.

Stipulation for Discharge.

It is hereby stipulated that the above named ship may be discharged from arrest in the above entitled action on the claimant giving an admiralty stipulation in the sum of ten thousand dollars, with G. M. Josselyn and Joseph G. Levenseller as sureties.

WALTER G. HOLMES,
Proctor for Libellant.

[Endorsed]: Filed October 11th, 1892. Southard Hoffman, Clerk. By J. S. Manley, Deputy Clerk.

No. 1042.

Stipulation.

Stipulation entered into pursuant to the rules of practice of this Court.

Whereas, a libel was filed on the 10th day of Oct., in the year of our Lord one thousand eight hundred and ninety-two by Jens P. Jensen against the ship "Joseph B. Thomas" etc., for the reasons in the said libel mentioned; and whereas, the said ship "Joseph B. Thomas" etc., is now in the custody of the United States Marshal, under the process issued in pursuance of the prayer of said libel, and whereas the said ship "Joseph B. Thomas" etc., has been claimed by Sam'l Watts et al.; and whereas, it has been stipulated that said ship "Joseph B. Thomas" etc., may be released from arrest upon the giving and filing of an admiralty stipulation in the sum of ten thousand (\$10,000), as appears from said stipulation on file in said Court; and the parties thereto consenting and agreeing that, in case of default or contumacy on the part of the claimants or their sureties, execution for the above amount may issue against their goods, chattels and lands:

Now, therefore, the condition of this stipulation is such, that if the stipulators undersigned shall, at any time, upon the interlocutory or final order or decree of the said District Court, or of any appellate court to which the

above named suit may proceed, and upon notice of such order or decree to Andros & Frank, Esquires, proctors for the claimant of said ship "Joséph B. Thomas" etc., abide by and pay the money awarded by the final decree rendered by the Court or the Appellate Court if any appeal intervene, then this stipulation to be void, otherwise to remain in full force and virtue.

J. F. CHAPMAN,
For Self and Co-Owners,
G. M. JOSSELYN,
J. G. LEVENSALEK.

Taken and acknowledged this 11th day of October, 1892, before me.

JOHN FOUKA,
Commissioner United States Circuit Court, Northern District of California.

Northern District of California—ss.

J. G. Levensaler and G. M. Josselyn, parties to the above stipulation, being duly sworn, depose and say, each for himself, that he is worth the sum of ten thousand (\$10,000) dollars over and above all his just debts and liabilities.

G. M. JOSSELYN,
J. G. LEVENSALEK.

Sworn to this 11th day Oct., 1892, before me.

JOHN FOUKA,
Commissioner United States Circuit Court, Northern District of California.

Filed the 11th day of Oct., 1892. Southard Hoffman,
Clerk. By J. S. Manley, Deputy Clerk

Monition.

NORTHERN DISTRICT OF CALIFORNIA—ss.

The President of the United States of America, to the
se a 1) marshal of the United States for the Northern Dis-
trict of California, Greeting:

Whereas, a libel hath been filed in the District Court of the United States for the Northern District of California, on the tenth day of October, in the year of our Lord one thousand eight hundred and ninety-two. By Jens P. Jensen against the ship "Joseph B. Thomas," her tackle, apparel and furniture, for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said Court in that behalf to be made, and that all persons interested in the said vessel, her tackle, etc., may be cited in general and special to answer the premises, and all proceedings being had that the said vessel, her tackle, etc., may for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libelant. You are therefore hereby commanded to **attach** the said vessel, her tackle, etc., and to retain the same in your custody until the further order of the Court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said Court, to be held in and for the North-

ern District of California, on the 25th day of October, A. D. 1892, at eleven o'clock in the forenoon of the same day, if that day shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations on that behalf.

And what you shall have done in the premises do you then and there make return thereof, together with this writ.

Witness, the Hon. WM. W. MORROW, Judge of said Court, at the city of San Francisco, in the Northern District of California, this 10th day of October, in the year of our Lord, one thousand eight hundred and ninety-two, and of our Independence the one hundred and seventeenth.

SOUTHARD HOFFMAN,

Clerk.

By J. S. Manley, Deputy Clerk.

WALTER G. HOLMES, Esqr.,

Proctor for Libelant.

Marshal's Return.

In obedience to the within monition, I attached the ship "Jos. B. Thomas" therein described, on the 10th day of October, 189—, and have given due notice to all persons claiming the same that this Court will, on the 25 day of October (if that day be a day of jurisdiction, if not, on the next day of jurisdiction thereafter), proceed to trial

and condemnation thereof, should no claim be interposed for the same.

San Francisco, Cal., Oct. 11, 1892.

W. G. LONG,

United States Marshal.

By F. L. Morehouse, Deputy.

[Endorsed]: Monition returnable Oct. 25th, 1892. Walter G. Holmes, Proctor for Libellant. Issued Oct. 10th, 1892. Filed October 25th, 1892. Southard Hoffman, Clerk. By J. S. Manley, Deputy Clerk.

[Style of Court and Title of Cause.]

Answer.

The answer of Samuel Watts, Alfred Watts, N. C. Mehan, W. M. Hyler, S. B. Starrett, W. J. Lermond, E. N. Miller, C. K. Washburn, C. H. Washburn, H. A. Anderson, J. N. Brown, C. D. Payson, H. Hyler, J. G. Fish, J. T. Berry, C. W. Lewis, Wm. F. Hall, S. C. Jordan, J. B. Thomas, F. L. Richardson, Ambros Snow, J. S. Burgess, C. C. Black and J. F. Chapman, to the libel of Jens P. Jensen, against the ship "J. B. Thomas," her tackle, apparel and furniture, and against all person lawfully intervening for their interest therein in a cause of damage, civil and maritime, alleges:

I.

Answering unto the first article in said libel, these claimants admit the allegations therein, except they deny that said libelant was on board of said ship with the knowledge or permission of the master thereof, but they admit that the libelant was on board said ship with the knowledge and permission of the second officer of said ship, who was then and there in charge there.

II.

Answering unto the second article in said libel, these claimants, on information and belief, deny that said or any barrel fell through the hatch of said ship into the hold thereof, and struck said libelant on the head, or struck him at all, or that any barrel fell through the hatch of said ship.

III.

Answering unto the third article in said libel, these claimants deny that any barrel fell down said hatch upon said libelant in consequence of the negligence of the master of said vessel, or of the negligence of those or any of those entrusted by the owner of said vessel with the care and management of the same, or that any barrel whatsoever fell down said hatch upon said libelant or at all.

IV.

Answering unto the fourth article in said libel, these claimants deny that by reason of the supposed fall of any barrel upon the said libelant his skull was fractured, or that he sustained any injuries whatsoever, or that any barrel fell upon him or struck or injured him at all.

V.

Further answering unto said libel these claimants, on information and belief, aver the truth and fact to be: That the said libelant was one of several laborers employed by a stevedore who had contracted with the owners of said vessel or their agents to load the same. That it was the duty of and was usual and customary among laborers employed by stevedores to load and unload vessels at the port of Philadelphia to take off and put on, as occasion might require, the covers of the hatches of such vessels while being loaded. That the said laborers, among whom was the said libelant, on the morning of the day on which the accident to the said libelant occurred, took off the hatch covers of the fore hatch and negligently and carelessly piled them up forward of the head ledge or forward combing of said hatch. That a small empty keg had been placed by someone on the end of one of these hatch covers, but by whom the same was done these claimants are ignorant, so that they can make no

avertment in respect to the same. That one of the said laborers, a coservant with the said libelant, trod upon or otherwise negligently interfered with said hatch covers, by reason of which and also in consequence of the improper and negligent manner in which they had been placed in the position in which they were by some of the said laborers, coservants of said libelant, they tipped and precipitated said keg into the hold of said vessel, by reason thereof the said libelant was by the same struck and injured; that the accident and injury to the libelant was occasioned and brought about solely in consequence and by reason of the negligence of the coservants of said libelant or some of them, and not by reason of any supposed negligence of these claimants or any of them, or that of their servants or any of them. But whether said libelant, as in the fourth article of said libel is alleged, was confined to the hospital for fifteen weeks, or for what length of time he was confined to the hospital, or whether during the time that he was in said hospital he had two or any operations performed on him, or whether he endured very great pain or suffering, or whether by reason of said injury his right or any side was paralyzed, or if paralyzed, continued to be paralyzed, or that by reason of any of the aforesaid alleged injuries libelant has been unable to perform any work or to earn any wages, or whether he has had his earning capacity destroyed, or has sustained permanent injury to his health or body of a most serious or other character, these claimants are ignorant, so that they can neither admit nor deny the same, or any of them, wherefore they call for proof of each and every of said allegations.

VI.

These claimants further, on information and belief, deny that in consequence of the supposed fall of said supposed barrel or at all, the said libelant has sustained damages in the sum of ten thousand dollars, or in any sum whatsoever.

VII.

Answering unto the fifth article in said libel, these claimants admit the allegations therein.

VIII.

Answering unto the sixth article in said libel, these claimants admit that the premises are within the admiralty and maritime jurisdiction of the United States and of this Honorable Court, but they deny that all and singular the same are true.

Wherefore, these claimants pray that said libel be dismissed.

J. F. CHAPMAN,

For Self and Co-Owners.

ANDROS & FRANK,

Proctors for Claimants.

Sworn to before me, this 3rd day of November, 1892.

[Seal]

GEO. T. KNOX,

Notary Public.

[Endorsed]: Filed November 3rd, 1892. Southard Hoffman, Clerk. By J. S. Manley, Deputy Clerk.

*In the District Court of the United States, for the Northern
District of California.*

IN ADMIRALTY.

JENS P. JENSEN,

vs.

} No. 10,452.

THE SHIP "JOSEPH B. THOMAS."

Testimony.

It is agreed that the testimony of the witnesses shall be taken stenographically and signatures waived, counsel to be furnished with copies of the testimony.

Dr. EDWARD C. ELLETT, having been duly sworn, was examined as follows:

By MR. PRICHARD.—Q. What is your occupation?

A. I am a physician and a graduate of the University of Pennsylvania.

Q. In April, 1892, you were connected with what institution?

A. St. Agnes Hospital, Philadelphia.

Q. Please state in your own way what you know of the case of Jens P. Jensen.

A. On the 11th of April, 1892, he came to the hospital.

He was brought there by the police patrol, if I remember rightly, and said that while working on the vessel he had received an injury by a water bucket or a water barrel or something of the sort falling and striking him on the head. The notes of the case are as follows:

"E. P. Jensen, 31, Denmark. (Chas. Davis, Old Navy Yard.) 4, 11, '92. While at work on the wharf loading a vessel, a water barrel fell thirty feet clear, the rim striking him on the left parietal region, inflicting a wound extending in an antero-posterior direction about three inches long, and producing a compound comminuted fracture of the skull, with depression. He was conscious and walked into the house. No paralysis anywhere; sensation unimpaired. As the symptoms were not urgent, the wound was packed, after cleansing with C. H. I 3 gauze, a few vessels tied, and a wet 1-5000 compress applied.

"4, 12, '92. Operation at 12 M. Anasthesia by mixture of C (3) and E (6) by Dr. Kelly. Incision prolonged, and loose fragments separated and removed. Lacerated wound of dura, exposing cortex lacerated slightly. Horse hair drainage. Wound closed with silver wire, and A. D. Reacted well.

"4, 14, '92. Very dull. Speech inarticulate.

"4, 16, '92. Epileptiform convulsions at 9 A. M., only affecting head and neck. Both sterno-cleido mastoids affected, the left more than the right. The right side of the face much more affected than the left. The movements consisted in clonic spasms of face and neck, the mouth being drawn much to the right. Frothing at the mouth. Lasted about two and a half minutes. Appar

ently consciousness was not lost, as he made several deliberate voluntary motions with the hands during the convulsion. At its completion, he lapsed into his former dull condition. Says he never had a similar attack.

"4, 16, '92. Noticed a paralysis of right side of face and right arm. Wound dressed; suppurating. In the median line, about the position of the lambda, a depressed area about the size of a half dollar was noticed, probably old, though the patient says he knows of no previous injury to head.

"4, 18, '92. No more convulsions. Palsy of face a little better. Arm same as before. Seems a little less dull.

"4, 19, '92. Some improvement in mental condition. Paralysis same. Dressed; stitches removed. On syringing wound, particles of what was apparently disintegrated cerebral substance came away. A probe passed downwards easily to a depth of two and a half inches.

"4, 21, '92. Legs all right, as to motion. Dressed.

"4, 22, '92. Motion almost abolished in right leg.

"4, 23, '92. Profuse purging. Dressed. A mass of cortical matter (apparently) bulging at center of wound, which is open. Expression is bright, though speech still inarticulate. Paralysis as above.

"4, 27, '92. Dressed.

"4, 28, '92. Speech a little better. A friend states that when a boy he fell and hurt the back of his head."

I went off at the hospital on the 1st of May, and the next note was made by Dr. Davisson.

Q. What was the nature of the operation which you performed?

A. There was considerable injury to the bones of the head; they were broken and driven down below the level of the other bones, and were producing pressure on the brain. The operation consisted of liberating and removing those fragments.

Q. At the time you last ceased to attend him, what was his then condition?

A. He was confined to bed; he could not stand; he was mentally dull, and had paralysis of one side of the face; I think it was the right. It is stated in the notes. Also his right arm and leg, if I remember rightly; he could not lift his arm from the bed at all. He had some power in his leg, but not enough to raise it right straight up off the bed, and on account of the paralysis of his face his speech was quite indistinct.

Cross-Examination.

By MR. EDMUNDS.

Q. When did you graduate? A. In May, 1891.

Q. This was in April, 1892?

A. Yes, sir.

Q. So that you had graduated about a year?

A. Yes, sir.

Q. Did anybody help you with this operation?

A. Yes, sir; I only assisted. The surgical chief at the time, Dr. J. Ewing Mears, did the operation; his address is 1429 Walnut Street, Philadelphia.

Q. Is he here today? A. No, sir.

Q. You were simply assisting?

A. Yes, sir.

Q. Why did you make these inquiries with reference to old injuries?

A. At the date it is noted in those notes we discovered that he had a depression in the skull considerably further back than the site of the injury, and we thought it possible, though not probable, that it had been inflicted at the same time the other was. I inquired to see if he had ever hurt his head before.

Q. You found that he had? A. Yes.

Q. Were you not also surprised with his condition subsequent to the operation?

A. No, sir.

Q. Did you expect, before you made the operation, that his condition would probably be as you found it after you made the operation—did you expect paralysis and convulsions?

A. Well, we were not surprised to find them.

Q. Why then did you not make the operation the day before?

A. Because his condition was not urgent enough to demand it.

Q. That is, you thought the day he came there that there was nothing very serious the matter with him?

A. We knew the extent of the injury, but he was in no immediate danger of dying, and we did not think that a few hours more or less would make any difference. The wound was cleaned up and a temporary dressing applied right away. He came in, if I remember rightly, on the afternoon of the 11th and was operated on about noon of the 12th.

Q. Then for nearly twenty-four hours nothing was done with him except to put an ordinary clean dressing on the wound?

A. No sir.

Q. You thought that was sufficient at the time?

A. Yes, sir.

Q. Have you made an examination of him lately?

A. No, sir; not since the 1st of May, 1892.

Q. What was his condition on the 1st of May?

A. I have just stated it to Mr. Prichard. That was his condition when I stopped seeing him.

Redirect Examination.

By MR. PRICHARD.—Q. Was the nature of the injury such that this delay from the afternoon of the 11th to noon of the 12th in any way aggravated the result?

A. We did not think so; no, sir.

By MR. EDMUNDS.—Q. Still if you had known that the man was likely to have convulsions, you would have looked after him a little more carefully, I suppose, would you not?

A. No sir.

By MR. PRICHARD.—Q. Would it make any difference, as to the liability as to convulsions whether you performed the operation at once or, the next day?

A. Well, we did not think it would at the time make any difference as to his subsequent condition.

Q. Do you think so now?

A. No, sir; I do not think it would.

By MR. EDMUNDS.—Q. You thought these convulsions might be anticipated, did you?

A. Yes, sir; they are not unusual in such cases.

Dr. ALEXANDER HERON DAVIDSON, having been duly sworn, was examined as follows:

By MR. PRICHARD.—Q. What is your profession?

A. I am a physician and graduated at the University of Pennsylvania May 6th, 1892.

Q. Did you succeed Dr. Ellett at St. Agnes' Hospital?

A. I went on duty in the surgical wards after he left.

Q. State your knowledge of the case of Jensen from the time you took charge of it.

A. When I found him he was in bed, and had paralysis of the right side of the body—the right side of the face, the right arm, and the right leg. He could not put out his tongue. He could not raise his arm, of course.

Q. Have you a copy of the notes which you made?

A. I have; this copy is all in my handwriting.

Q. Is that all there is on the record?

A. Yes, sir; this was copied to give to a person who wanted to know about the case—a man who wanted the whole case simply for medical interest; I copied it all off afterwards; part of the handwriting is Dr. Ellett's and part mine in the history sheet. As I say, this was on the 3d of May. My notes on the subject are as follows:—

"5, 3, '92. Dressed. Paralysis of right side of body and right side of face. Dressed every other day.

"5, 9, '92. Part of horse hair drainage removed. Is getting the use of right arm and leg slightly; is able to close both eyes, and can protrude tongue slightly.

"5, 11, '92. Motion in arm and leg returning.

"5, 12, '92. Dressed. Horse hair removed.

"5, 18, '92. With assistance, patient walked a short distance.

"5, 19, '92 Dressed. Could be understood, being able to talk comparatively clearly, but slowly. Hernia of brain much less.

"5, 21, '92. More motion in arm. Talks more clearly. Hernia less. Wound clean and healing over.

"5, 23, '92. Dressed. Brain below level of cranial bones.

"6, 10, '92. Patient had two attacks of convulsive twitchings on right side of face.

"6, 25, '92. Wound almost healed, but two openings, one about two and a half inches long, the other about one-quarter of an inch long remaining.

"7, 1, '92. A small spicule of bone extruded from larger opening.

"7, 5, '92. A small spicule of bone found in dressing. But one opening remains. Interrupted current applied to arm daily.

"7, 15, '92. Discharged. Wound entirely healed over, though there is still the depression running in an antero-posterior direction. Power in arm good; fingers, however, weak. Leg good. Speech slow but intelligible. Some paralysis of right side of face. To come back daily for battery."

Q. At the time that he was discharged from the hospital, what was his condition, so far as capacity for manual labor went?

A. He was not in any condition for manual labor; he couldn't use his right hand or arm to any extent. He could raise it up, but he hadn't power in it. I believe he had not more power in it than to sufficiently comb his hair, if I remember right.

Q. Are you able to say what the probabilities are of the complete recovery of this man?

A. No, sir; it would be merely a personal opinion.

Q. I suppose that is a matter that can only be determined by time?

A. Yes, sir; I could not say how much more he will recover than he has since the 1st of May.

Cross-Examination.

By MR. EDMUNDS.—Q. When did you see him last?

A. When he served a subpoena on me about three weeks ago.

Q. How long before that was it that he left the institution?

A. He was around the institution, I think, about a month before that. He was discharged from the institution on the 15th of June, or the 17th of June, which ever it is on the record. He came around at one time after that and said he was coming to say that he might need us in court, I think. He used to come around to see some of the other patients; he was discharged, however, on the 15th.

Q. Did he say what he was doing when he came around there?

A. No, sir; I asked him how he was getting along, and he said he was pretty well, and showed me how he could use his arm and leg. I think I did ask him what he was doing, and he said "nothing." I won't swear to that.

Q. He said that he was getting along very well?

A. Well, yes, sir; to what he had been.

Q. That he was improving?

A. That he was about the same as he was when he left the hospital, improving slightly, perhaps.

Q. What did he say?

A. I don't remember what he said exactly; he said, in a sort of a way, "Oh, I am getting along fairly," something like that. He did not seem to be buoyed up.

Q. I did not ask you what he seemed; the question is what he said.

A. I can't remember exactly.

Q. What he did say left the impression on your mind that he was improving?

A. No; it didn't leave the impression on my mind that he was improving, no more than that he could walk around and had the use of his leg. Yes; a slight improvement in his arm, that is, an improvement all around.

Q. How old are you?

A. I will be twenty-four my next birthday, the 2d of October.

Q. When you took charge of this man you were not a physician; you graduated after you took charge of him?

A. Yes; I had not graduated then.

Q. Dr. Mears has charge down there, has he?

A. He is one of the surgical chiefs.

Q. He does not reside there, but simply visits?

A. Yes, sir.

Q. How often?

A. I never was under him, and I don't know how often he visits.

Q. Who were you under?

A. Dr. W. W. Kean, 1729 Chestnut, I think.

Q. How often did he come?

A. Whenever it was necessary; sometimes once a day; sometimes every other day, and other times, every two or three days, depending on what cases he had in the house, and whether he thought it was necessary to come down. If he had an operation one day and wanted to see the case the next day he would come down the next day.

Q. Did you notice the depression that this man had on the back of his head that the other physician spoke of?

A. No; I can't say that I did. I was principally interested in the location of the wound. As far as I recollect now, I don't remember having noticed the other depression—I might have seen it there and I might not.

Q. What do you think was the cause of these convulsive twitchings?

A. I don't know; it would be hard to say what was the cause of them. In my opinion they would be due to the injury.

Q. What makes you say that?

A. I think they were due to it.

Q. But what makes you say that?

A. They came on after he was injured. Then again,

there were little pieces of bone in the brain that might have set up this irritation and caused the convulsive twitchings. After they came out I never saw any more convulsive twitchings. They might have been due to that and they might not.

Q. If they were entirely removed the irritation would cease, wouldn't it?

A. If they were entirely removed irritation caused by them would cease.

Q. If a bone resting on the brain was removed and properly set there would be no pressure upon the brain at all would there?

A. What do you mean by properly set?

Q. Did you not remove the depression?

A. No, I had nothing to do with the depression.

Q. The bone that was broken was depressed and it was removed.

A. Yes; I believe it was.

Q. So that the head resumed its rotundity?

A. Yes, sir; it afterwards resumed more than its rotundity.

Q. If it did that, the pressure was off the brain, wasn't it?

A. Yes, sir.

Q. The pressure having been removed from the brain, of course the man, if he was a strong, healthy man, would naturally get well, wouldn't he?

A. Yes, sir; but I cannot say that the pressure was removed from the brain, if a couple of these spiculars of bone that had been driven in so that they couldn't be seen were there.

Q. You don't know that that was so?

A. No; but you asked me what I thought was the reason of the convulsions.

Q. I speak, however, after the bone came out, when you discharged him from the hospital—the bones of the skull and the pressure had been removed?

A. Yes, sir.

Q. So far as you know, all the pieces of bone had come out?

A. Yes, sir.

Q. Therefore there was nothing to prevent at that time continuation of improvement?

A. No, sir.

JOHN F. FITZGERALD, having been duly sworn, was examined as follows:

By Mr. PRICHARD.

Q. What is your business?

A. I am employed along the wharf by the Pennsylvania Railroad Company.

Q. On April 11th, 1892, what was your business?

A. The same.

Q. Were you on board the ship "Joseph B. Thomas" at the time Mr. Jens P. Jensen was injured?

A. Yes, sir.

Q. What were you doing?

A. Me and another young fellow went aboard to get a piece of rope.

Q. Where were you at the time of the accident?

A. Right standing over the hatch.

Q. Which hatch?

A. The ship's hatch.

Q. Please state in your own way what you saw of this accident.

A. The mate was between decks, and he started to come up to get on the main deck. Mr. O'Donnell was helping him up—the stevedore—to get up on the main deck. A young fellow on the ship started to run around to help the mate to get him up on the main deck, and he tread on that hatch, and that hatch upset the barrel, and the barrel fell down in the hold. It wasn't a barrel, it was a keg.

Q. Where was the keg standing at the time of the accident.

A. Right on the corner of the hatch. The hatches were taken off, and then put one on top of the other, and the keg set over, and when you tread on that corner of the hatch that turned the keg over and it rolled right down the hatch before anybody could get hold of it.

Q. Who was the young man that trod on the hatch?

A. A young man belonging to the ship.

Q. Do you know how long the barrel had been on the hatch? A. No, sir.

Q. On what part of the ship was the hatch?

A. Forward.

Q. How do you know this was the barrel that hit Mr. Jensen?

A. I saw it hit him. I hallooed to him to look out below, when it was falling—when it fell.

Q. Did you see it strike him? A. Yes, sir.

Q. Where did it strike him?

A. It hit him on the head.

Q. Who was O'Donnell that you speak of?

A. He was foreman for the stevedore.

Q. Do you know who else was on deck at the time this barrel fell?

A. Yes, sir;; I knew a young fellow by the name of William Gray.

Q. What was his business?

A. Working down at the wharf there, too.

Q. Did these hatch covers project over the hatch, or were they alongside of the hatch?

A. They were forward of the hatch. They were taken off.

Q. Did the ends of the hatch covers project over the hatch or not?

A. No, sir; forward of the hatch altogether.

Q. What part of the hatch covers did the barrel set on? How close to the hatch was the barrel?

A. That I couldn't say; I never measured those hatches, and I don't know how wide they were. I don't suppose they are more than about four feet anyhow, if they were that. The hatch coverings sat forward of the hatch, and this barrel was sitting on the port forward end of the hatch covering.

Q. Do you know the name of the mate of the ship who was trying to get up?

A. No, sir; I couldn't tell you; I don't know his name.

Cross-Examination.

By Mr. EDMUNDS.

Q. You are working for the Pennsylvania Railroad Company?

A. Yes, sir.

Q. In what capacity?

A. Moving cars around, up and down from the ships.

Q. As a laborer? A. As a yard man.

Q. You had nothing to do with this ship?

A. No, sir; no more than getting cars set for the stevedore.

Q. Had you been on board of her before?

A. Yes, sir.

Q. Do you know her officers and crew?

A. She had no crew. When they are loading at the wharf they have no crew any more than the mate, boy, and a captain sometimes.

Q. You went aboard of her with somebody else to get a rope. A. Yes, sir.

Q. Where did you expect to get a piece of rope there?

A. From the mate.

Q. Did you see him and ask him for it?

A. Yes, sir.

Q. What were you going to do with it?

A. It was for this other young fellow, Gray.

Q. What did he want it for?

A. I couldn't tell you.

Q. Gray wasn't connected with the vessel?

A. We went aboard, the pair of us, and we asked the mate for this piece.

Q. What were you going to do with the rope?

A. I don't know what he wanted to use it for.

Q. What did Gray do?

A. He was a clerk for the Pennsylvania Railroad.

Q. Did you get the piece of rope?

A. No, sir; this man was hurt between the time. He wanted a piece of half-inch rope?

Q. Manilla rope? A. Yes, sir.

Q. What for? A. I couldn't say.

Q. How long a piece did he want?

A. He didn't mention the length, either, that I know of.

Q. You don't know what he was going to do with it?

A. No, sir.

Q. Did you happen to get on board there just as this accident occurred?

A. Yes, sir; it was through that that the accident occurred, I think—the mate coming up to get this piece of rope for this young man.

Q. You went right aboard, and went forward, you and Gray both?

A. We went right up forward. The ladder comes there.

Q. Did you go up on the fore-castle hatch?

A. Yes sir.

Q. When you got there, did you stand there?

A. Yes, sir.

Q. Where was the mate?

A. Down between decks.

Q. That is, in the hold below? A. Yes, sir.

Q. There was a hatch right under you then, was there?

A. Yes, sir.

Q. Then the lower hold was below that?

A. Yes, sir.

Q. Men were working in the lower hold?

Q. And the three hatch coverings, therefore, would come up a little higher than the 'combings?

A. They would come about even.

Q. This barrel or keg was set on the other end of the covering away from the hatch?

A. Yes, sir.

Q. The end away from the hatch?

A. Yes, sir.

Q. You say you went up there after this rope, you and Gray?

A. Yes, sir.

Q. Who did you ask for it?

A. The mate.

Q. Where did you find the mate?

A. Down between decks.

Q. What did he say?

A. He said all right, that he would come up and get us a piece.

Q. To come up, he had to come from between decks up on top of the topgallant forecastle, didn't he?

A. Yes, sir; he had to get up there.

Q. How far is that—how high is that space?

A. I don't know; about five feet, I guess. It might have been more than that.

Q. He couldn't get up without assistance, you say?

A. No, sir; Mr. O'Donnell helped him up from below on to the between decks.

Q. Then some young fellow ran around there to help him up further?

A. Yes, sir; got him by the hand.

Q. And this young fellow who ran around you say was

the one that stepped on the hatch combing; is that right?

A. Yes, sir; on the hatch coverings.

Q. I suppose he could not get around there without stepping on them, could he, from where he was?

A. I don't know; I couldn't say anything about that.

Q. Where did you first see this young fellow that ran around and stepped on them?

A. I saw him when he came around.

Q. Did you ever see him before that?

A. Yes, sir; he belonged aboard the ship.

Q. Where did you ever see him before that?

A. On deck.

Q. When?

A. I couldn't tell you when; several times.

Q. What was he doing when you saw him?

A. He was coming around to help the mate; knocking around the deck and one thing and another. I couldn't say what he was doing.

Q. How old was he?

A. That I couldn't say; I don't know his age.

Q. Was he forty?

A. No; he couldn't be forty; he wasn't that old.

Q. Do you think he was thirty?

A. I couldn't say; I don't know his age.

Q. Was he between thirty and forty or twenty-five and forty?

A. He wasn't that. I don't know his age.

Q. Couldn't you tell us whether he was twenty-five?

A. No, sir; not men that knock around at sea.

Q. Was he a man?

A. He was a young man; yes, sir.

Q. Was he of age? A. ' I couldn't say.

Q. What do you think about it; can't you tell by a man's looks whether he is of age or not?

A. No; I couldn't. Many a man is deceiving in age; young fellows knocking around at sea.

Q. Do you know his age; whether he was sixteen or forty? A. I know that he wasn't forty.

Q. Are you sure that he wasn't sixteen?

A. No; I couldn't say that.

Q. How often had you been aboard of that ship?

A. I couldn't tell you; I used to go aboard of her occasionally.

Q. How often had you been aboard of her before that day?

A. I couldn't say, because I never keep account going aboard those ships.

Q. Are you willing to swear that you were ever aboard of that ship before? A. Yes, sir.

Q. What did you go there for?

A. We went aboard; we usually go aboard with the shipping clerk; go aboard several times.

Q. What time?

A. Merely going aboard of her; that's all.

Q. You had no business aboard of her at all?

A. No, sir; no business aboard.

Q. Did you ever have any talk with the crew?

A. No, sir.

Q. Did you ever have any talk with the officers?

A. Only when we meet them at Davis, the stevedore's office.

Q. You know the stevedore, don't you?

A. Yes, sir.

Q. You know all these stevedores?

A. No, sir; I don't know all of them.

Q. Do you know Jensen?

A. Yes, sir.

Q. How long have you known him?

A. Since he has been working around the wharves.

Q. How long ago has that been?

A. I couldn't say how long.

Q. Who asked you to come up here?

A. I was subpoenaed to come up here.

Q. Who subpoenaed you?

A. Jensen?

Q. Didn't he come to see you before you were subpoenaed?

A. He has seen me time and again down there.

Q. He had a talk with you about the case?

A. No, sir.

Q. He never said a word to you?

A. No, sir; not about the case.

Q. Didn't he know what you saw? A. No, sir.

Q. How did he find that out?

A. By them telling him down there.

Q. You never told him?

A. No, sir. I told him what I seen after he came out of the hospital.

Q. How old are you? A. Thirty-eight.

Q. Do you think this young man that you saw was as old as you are? A. No, sir.

Q. Did you ever have any talk with this young fellow that you speak of? A. No, sir.

Q. You don't know his name?

A. No, sir; I do not know the mate's name, only he is the mate.

Q. The young fellow wasn't the mate, was he?

A. No, sir; not that I know of.

Q. Nor the second mate?

A. I couldn't say whether he was the second mate or not.

Q. The young fellow was neither one of the mates?

A. I don't know whether he was the mate or not?

Q. If he ran around to help the mate, of course he wasn't the mate

A. No, sir; the one in the hold I call the mate—the one that was down between decks that I always called the mate.

Q. You didn't know in what capacity this young man was at all? A. No, sir.

Q. You don't know where he belonged to?

A. He belonged aboard the ship.

Q. Where did he live? A. Aboard the ship.

Q. Are you sure of that?

A. That is what they say.

Q. Who said so?

A. That is what I say myself. I don't know whether he lived there or not. Sometimes they live ashore. Sometimes they sleep aboard and eat ashore.

Q. Where did you get this information from that he belonged to the ship?

A. Nothing, only seeing him knocking around there, that's all.

Q. You didn't know every man in the stevedore's gang, did you?

A. No, sir; only by sight.

Q. Did you know them all?

A. Those that knocked around the wharf I know—the stevedore's men—by eyesight.

Q. Did you know every man in the stevedore's gang working there that day?

A. No, sir; I couldn't swear to that.

Redirect Examination.

By Mr. PRICHARD.

Q. Do you know whether or not this barrel was freshly painted?

A. I couldn't say anything about the barrel; I don't know whether it was freshly painted or nothing at all about it.

PATRICK O'DONNELL, having been duly sworn, was examined as follows:

By Mr. PRICHARD.

Q. What is your business?

A. I am foreman for Mr. Davis, the stevedore.

Q. In April, 1892, were you working on board the ship "Joseph B. Thomas"?

A. To the best of my knowledge, I was; yes, sir.

Q. Were you working on her the day the accident happened to Mr. Jensen? A. Yes, sir.

Q. Did you have charge of the gang of men?

A. Yes, sir.

Q. What were the stevedore's men doing on that boat?

A. Putting in case oil before the accident happened; they were loading.

Q. I suppose the stevedore had entire charge of the loading?

A. He had charge of the gang of men that were there.

Q. Can you state the names of the men who constituted this gang on that day?

A. I couldn't state the whole of them.

Q. Do you know how many you had?

A. Yes; I could tell very nearly. I had fourteen men, I should judge, to the best of my knowledge.

Q. Have you any record anywhere of their names?

A. No, sir.

Q. Do you know who took off the hatch coverings of this forward hatch on the morning of the day of the accident?

A. I couldn't say any more than our own gang.

Q. They were taken off by the stevedore's men?

A. To the best of my knowledge, yes, sir.

Q. State what you know about this accident?

A. As far as the accident is concerned, it is this: We were putting in case oil. We try to keep case oil from under the hatch. Then we have to make a stage to work easy, to build it up. When we got finished that case oil that day I called the gang in off the wharf to tear this stage up and put it back. I called the gang in off the wharf to do it, to hurry the work along. Jensen general-

ly did work on the wharf, and I called them all in to hurry the work along. I think it was very near the last case, to my knowledge, was up. After I got the stage up, I used short wood to chock it, and the second mate of the ship jumped down to see how much short wood I was using. He came down to see whether I was using too much. He stood there a minute and said it was all right. He started to climb up the forward stanchion of the forward hatch. He got up as far as the combings, when he put his hand over and sung out to a boy, to the best of my knowledge, to give him a hand to pull him over, and that's all I could see of it. I gave him my hand, put it under his foot to help him over, and I heard somebody halloo "under," and when I looked down the hatch I saw this man laying on the floor of the ship—that is, Jensen. I ordered a stage to be slung, and sent down to hoist the man out. He was hoisted out and took over to Mr. Davis' office, and I went over and washed him off, and the patrol wagon came and took him to the hospital.

Q. Did you see what it was that fell down and struck him? A. Yes, sir.

Q. What was it?

A. It was a keg about the size of a vinegar barrel or a cider barrel. They generally use them for a water cask in the forecastle. I should judge, about two feet high.

Q. Did it belong to the stevedore's men?

A. No, sir; it belonged to the vessel, I suppose. It didn't belong to the stevedore.

Q. Do you know who it was that went forward to help the mate up?

A. No, sir; I couldn't say that. I was in between decks.

Q. Do you know whether or not all of your gang were down in the hold? A. No, sir.

Q. Do you know how many of them were away?

A. No, sir; I couldn't say.

Q. Do you know where those were who were down in the hold?

A. The hatch tender was on the forecastle deck, of course, and I had one man between decks with me, getting out wood, to the best of my knowledge now. Of course I never thought I was going to be cross questioned on it, or I might have remembered more.

Q. Would your pay roll show the exact number of men you had working on that ship?

A. Yes, sir; we keep every day's pay, and can tell what a man makes a week. I think I can come within two, to the best of my knowledge.

Q. Did you have any connection with the ship at all, or did any of your men; that is, were you in the employ of the ship?

A. I am not in the employ of the ship at all, but of Mr. Davis, who was the stevedore for the ship.

Q. Is he part of the crew of the ship?

A. No, sir; he has nothing to do with her, any more than to load her.

Q. He was an independent stevedore?

A. Yes, sir.

Cross-Examination.

By Mr. EDMUNDS.

Q. Mr. Davis had the contract for loading this vessel as stevedore? A. I suppose so.

Q. You were his foreman? A. Yes, sir.

Q. The gang of men working there were your men?

A. Yes, sir; under my control.

Q. Under your control solely. A. Yes, sir.

Q. Jensen was one of them? A. Yes, sir.

Q. Jensen, with a number of others, was working in the lower hold, stowing? Is that correct?

A. No, sir.

Q. Where was he working?

A. He was working on the wharf.

Q. I mean at the time that he was hurt he was in the lower hold?

A. Yes, sir; helping to lift up the cases of the stage.

Q. That is, he was performing the usual work of a stevedore in the lower hold at that time?

A. Yes, sir; so far as helping.

Q. How many men were down in the lower hold at that time, do you think?

A. To the best of my knowledge, I suppose there was about twelve men.

Q. The other two men, you don't know positively where they were, except that one of them must have been the tender on the forecastle hatch?

A. One was there, and one in between decks with me,

helping me to get out wood. I can't say whether there was twelve or thirteen at the present time.

Q. You don't know how many there were?

A. Not at the present time.

Q. How far was it from the lower hold up to the ceiling above you—the between decks ceiling?

A. I should judge about eighteen feet.

Q. To get from that lower hold up to the between decks you have to go up a stanchion, don't you, with steps on it, or how do you get from the lower hold to the between decks? A. By a ladder.

Q. Was that the ladder that the mate was coming up?

A. No, sir; the mate wasn't down in the lower hold.

Q. You were in the between decks?

A. Yes, sir.

Q. What was there above you—wasn't there a hatchway between you and the forecastle head?

A. Two hatchways—the main deck and the forecastle deck.

Q. In the first place, there was a hatch through the forecastle head?

A. The top of the forecastle head—that went about four feet to the main deck.

Q. Then there was a hatch opening from that main deck down to the between decks?

A. Yes, sir.

Q. That was about how far?

A. I should judge about seven feet.

Q. Then there was a hatch from between the decks down into the lower hold which was about eighteen feet?

A. Yes, sir.

Q. So that there were really four holes from the top of the forecastle down to the lower hold decks?

A. No, sir; three holds.

Q. You say the mate was in the between decks; is that right?

A. Yes, sir.

Q. You were in the between decks?

A. Yes, sir.

Q. There was another man there helping you with the wood in between the decks?

A. Yes, sir.

Q. Where did you get the wood from?

A. Forward in the eyes of her.

Q. Was that wood to chock with?

A. Yes, sir.

Q. Cord wood or old junk stuff?

A. Cord wood, I think, to the best of my knowledge—short cord wood.

Q. You got that from forward?

A. Yes, sir; from the eyes of the ship.

Q. Do you remember whether you got it off the starboard or port side?

A. The port side.

Q. This man brought you the wood?

A. No, sir; we both got it out together.

Q. You came across from the port eyes of the ship to the hatch, and put it down the hatch to the men who were doing the stowing as dunnage?

A. Yes, sir.

Q. There was only one man helping you?

A. Yes, sir; to the best of my knowledge.

Q. Who else was in there besides you and the mate and this one man? Did you see anybody else there?

A. No, sir; not to the best of my knowledge.

Q. Was there any cargo stowed in between decks?

A. Yes, sir.

Q. Was that full?

A. We don't stow cargo very few times forward of the forward hatch. I don't recollect now whether it was full or not.

Q. Was there a bulkhead across there?

A. A bulkhead of cargo—freight.

Q. You mean a bulkhead that you put there?

A. Freight.

Q. I mean that there was no permanent bulkhead of any kind forward of the cargo? A. No, sir.

Q. Was there any permanent bulkhead in the between decks forward of the cargo?

A. I think there was for coal—to hold coal.

Q. Do you mean the ship's coal?

A. Yes, sir.

Q. All the wood for dunnage that you were using you were getting from the between decks forward on the port side? A. Yes, sir; that day.

Q. To the best of your knowledge, there was only one man helping you? A. Yes, sir.

Q. It was from the between decks to the main deck that the mate was going up?

A. Yes, sir; to the main deck.

Q. Who was on the main deck beside the mate—did you see anybody or did you not notice?

A. I couldn't see anybody. I couldn't see. I was standing at the forward part.

Q. Where were the hatch coverings?

A. Forward of the fore hatch on the main deck.

Q. Where did your men have their drinking water?

A. They generally have it in the hold?

Q. Do you know where they had it that morning?

A. No, sir; I generally have a bucket that we carry with us?

Q. Did you have a light in the lower hold?

A. Daylight; nothing but daylight.

Q. You didn't see how this accident occurred yourself?

A. No, sir.

Q. You don't know except that it occurred?

A. Nothing more than I saw the man lying there. I didn't see it hit him. I saw one single case of oil there, which I think was left out.

Q. You heard somebody halloo, or was it you that halloosed "get from under"?

A. No, sir; somebody on the forecastle deck halloosed "under."

Q. All the men got under and got out of the way except this man.

A. I suppose so; he was the only man hit.

Q. It was usual for your men to take the hatch coverings off, wasn't it? A. Yes, sir.

Q. You have no recollection how they were piled except that they were forward of the fore hatch; that is all you know, is it not?

A. One on top of the other; yes, sir.

Q. They would come up to about level with the hatch combings, I suppose?

A. Well, I don't think they would within about three or four inches.

Q. How high were the hatch combings?

A. I should judge about nine to ten inches.

Q. I mean the forward hatch combings?

A. Yes, sir.

Q. Was the hatch covering in two or three pieces?

A. I think two.

Q. With ring bolts on the corner to lift them up by?

A. Yes, sir.

Q. Was it the first or the second mate that was coming up the hatchway that you are speaking of?

A. It was the second mate, as far as we understand it.

Q. It was the man that you understood was the second mate?

A. Yes, sir.

Q. And he had not got up all the way, as I understand, at the time this keg upset or fell down?

A. He got up far enough to put his hand over the combings and sing out for help.

Q. I mean that he was not up on the deck?

A. No, sir; his body was about from the deck to the top of the hatch combings, and his leg was below.

Q. His hands were on the hatch combings, I suppose?

A. Yes, sir; to the best of my knowledge, that's the way of it.

Redirect Examination.

By Mr. PRICHARD.

Q. Where was your hatch tender?

A. He was on the forecastle deck.

Q. Do you recollect what the mate said when he called out for help?

A. To the best of my knowledge, I think he hallooed "under" too when the rest of them hallooed "under."

Q. When he called, what did he say?

A. I couldn't say.

Q. Do you know whether he called out the name of anybody to help him?

A. No, sir; I couldn't say that.

Q. Mr. Edmunds has asked you about these hatch covers, and the piling of them. Were they properly or improperly piled?

(Objected to.)

Q. How were they piled?

A. One on top of the other.

Q. It has been testified to by one of the ship's witnesses that the hatch covers were not properly laid on the deck. Please state what you know about that, if anything?

A. I can't tell any more than one was laid down on deck and the other one on top of it.

Q. What was the proper way of piling those hatch covers?

A. I suppose one on top of the other.

Q. Were they piled on this day in any unusual manner?

A. No, sir. We generally take off the after hatch first, and then the forward one on top, so that when you go to put them on, the forward one is easier to put on, and there is no chance for a man to fall down when he puts the after one on.

Q. Was there any other way of piling those hatch covers which would have rendered them any safer, that you know of?

(Objected to.)

A. Not to my knowledge, there wasn't.

By Mr. EDMUNDS.

Q. I suppose you don't know now positively just exactly how those hatch covers were placed, except that they were placed on top of each other, do you?

A. No, sir; one on top of the other.

Q. That's all you recollect about it?

A. Yes, sir.

Q. You don't know specifically how it was done?

A. No, sir? I couldn't see on deck, of course.

Q. Do you know which one of your men placed them there?

A. No, sir; that would be impossible for me to tell.

MARTIN RYAN, having been duly sworn, was examined as follows:

By Mr. PRICHARD.

Q. What is your business?

A. Stevedore, laborer.

Q. Were you on the ship "Joseph B. Thomas" in April, 1892, when the accident happened to Mr. Jensen?

A. Yes, sir.

Q. What were you doing there?

A. I was down there working, tearing up an oil stage.

Q. You were in the lower hold as one of the stevedore's gang?

A. Yes, sir.

Q. Did you see Mr. Jensen struck by the barrel?

A. No, sir.

Q. How did you learn of the accident?

A. All I saw, I saw the second mate climbing up from between decks on the upper deck, under the gallant fore-castle. The next I heard was, "Look out below." I jumped into the wing of the vessel to get out of the way, and I looked around and I saw the keg laying there and Jensen laying down.

Q. Do you know who took off the hatch covers in the morning?

A. No, sir.

Q. You did not, I suppose?

A. No, sir.

Cross-Examination.

By Mr. EDMUNDS.

Q. You don't know anything about the accident, do you?

A. Well, no, sir; not exactly.

Q. You were in the lower hold at work along with this man?

A. Yes, sir; we had been working, and we were called up in the forward hold to tear up this oil stage to land the oil on.

Q. You saw the mate coming up the ladder from between decks? A. Yes, sir; climbing up.

Q. Just about that time you heard somebody halloo out, "Look out from under"?

A. "Look out below."

Q. You turned around and this man was lying there with the keg, hurt? A. Yes, sir.

Q. Where did you have your drinking water that day?

A. We used to have it in a bucket.

Q. Do you remember where you had it?

A. Yes, sir; we had it in the main hold—the main hatch.

Q. In a bucket or a keg?

A. We always had a bucket of water.

Q. Was it the second mate or the mate that you saw going up the ladder?

A. The second mate.

By Mr. PRICHARD.

Q. Did the keg that fell down belong to the stevedores?

A. No, sir; it belonged to the ship.

By Mr. EDMUNDS.

Q. Sometimes you do use things belonging to the ship to get drinking water in?

A. Oh, yes, sometimes; but our boss generally always finds us a bucket.

JOHN HUGHES, having been duly sworn, was examined as follows:

By Mr. PRICHARD.

Q. What is your business? A. Stevedore.

Q. Were you on the ship "Joseph B. Thomas" in April, 1892, when Mr. Jensen met with an accident?

A. Yes, sir; I was working down in the hold.

Q. At the time of the accident were you down in the hold. A. Yes, sir.

Q. State all you know about the accident.

A. We were all working there; I had just been lifting up some case oil, making a stage or platform to stand on, to pass back where it was raised up high. We were working there, clearing that up, and had just got done when somebody halloed out "under." Of course I jumped out of the road. We were all working around in the hatch; as soon as I turned around and look around, I saw this man lying on the floor and the keg down by the side of him.

Q. Did you hear anything that was going on up above you?

A. No, sir; I don't know any thing about what was doing up there.

Q. Do you know who took the hatch covers off that hatch that morning?

A. No, sir; I couldn't tell you. We very often take them off in the morning as soon as we start to work; but whether we did that morning or not I don't know. We always take them off and put them down level, just off the combings—always clear of the combings.

Q. Do you recollect whether you helped take them off that morning?

A. No, I don't recollect whether I did or not; I might and I might not.

Cross-Examination.

By Mr. EDMUNDS.

Q. It takes two men to take them off, doesn't it?

A. Yes, sir.

CHRIS NELSON, having been duly sworn, was examined as follows:

By Mr. PRICHARD.

Q. What is your business?

A. I was working for the stevedore.

Q. Were you working on board the ship "Joseph B. Thomas" in April, 1892, when Jensen was injured?

A. Yes, sir.

Q. Where were you working at the time of the injury?

A. In between decks.

Q. What were you doing?

A. Passing down some wood. I was helping Mr. O'Donnell.

Q. State all that you know of the accident.

A. There was no ladder in the hatch. The second mate came down the stanchion, sliding down on the stanchion, and he went up the same way, and as he went up this keg came down. He halloed to one of the boys or young men belonging to the ship to help him out of

the hatch, and Mr. O'Donnell, the foreman, helped him up, and the keg came down, and that's all I know.

Q. Do you know who took the hatch covers off that morning? A. No, sir.

Q. Do you recollect whether you helped or not?

A. No, sir; I didn't help, but I know that they were off. I know where the hatch covers were laying at.

Q. You didn't help take them off, you say?

A. No, sir.

Cross-Examination.

By Mr. EDMUNDS.

Q. The stevedore's men generally take the hatch coverings off? A. Yes, sir.

Q. How long have you been a stevedore?

A. About nine years I have been working for Mr. Davis.

Q. You were between decks. A. Yes, sir.

Q. Who else was in between decks?

A. Me and the foreman, Mr. O'Donnell.

Q. And the second mate?

A. Yes, sir; he came down.

Q. While he was going up this stanchion this keg came down?

A. Yes, sir; after he got on deck, as he got over the combings on deck.

Q. That is to say, you say he was all the way over the combings?

A. He got on top of the combings, and I saw the keg coming down. That's all.

Q. You don't know whether he stepped on the coverings or not?

A. I know that he had to get on them to get on deck.

Q. Do you know that his feet were over the combings?

A. Yes, sir; as he got on top of the combings the keg came down; that's all I know.

Q. Then your impression is that the second mate must have stepped on that hatch combing?

A. Yes, sir.

Q. As soon as he stepped on the hatch combing, that upset the keg; that's your idea, is it?

A. Yes, sir.

Q. Did you see that keg before?

A. Yes, sir; I saw it that forenoon. A young man was sitting painting it, and set it there to dry on the hatches.

Q. Which end was it on?

A. On the forward part of the hatch covering, on the port side.

Q. The port side of the ship was lying at the wharf?

A. Yes, sir.

Q. How wide do you think those hatch coverings were? A. About six feet, I guess.

Q. Then the keg would be about six feet away from the hatch combings, wouldn't it?

A. No, sir; there are two hatches. The two coverings were laid on the fore part of the combings—the fore part of the hatch, close by the hatch—and the keg was setting on top. It was painted and set there to dry.

Q. How big was the hatch?

A. It was pretty near square; I guess, about six feet.

Q. How many pieces were there in the hatch covering?
A. Two.

Q. Those two pieces were laid on top of each other?

A. Yes, sir.

Q. That would make it about four feet away from the hatch?

A. They were laid clear of the opening of the hatch—the fore part.

Q. What was this young man doing that helped the mate up?

A. He belonged to the ship.

Q. What was he doing?

A. Working around the deck, mostly at anything.

Q. What was he doing at the time?

A. I don't know exactly what he was doing at the time, but I know one of the two young men had been painting that keg and set it on top of the hatches to dry.

Q. You don't know that it was this young man?

A. No, sir; because the second mate halloood for help to get him out of the hatch.

Q. You didn't see the young man?

A. No, sir.

Q. But somebody come to help the mate up?

A. Somebody came there at the time.

Q. When the second mate called for somebody to help him, somebody came and took hold of his hands?

A. Yes, sir.

Q. O'Donnell helped him on to his feet, did he not?

A. Yes, sir.

Q. You don't know who it was that had hold of his hands, but what you do know, you say, is that about the time the mate got on to the hatch combing the keg came down? A. Yes, sir.

Q. How many hatch holes were there forward there?

A. Three. Three decks.

Q. One from the topgallant forecastle, and one up through the main deck, and one down into the lower hold? A. Yes, sir.

Q. How high was the space between the main deck and the forecastle?

A. About four feet, I guess.

Q. How high was it from the between deck and the main deck?

A. Between seven and eight.

Q. How high was the lower hold?

A. I don't know.

Q. Where did you get the wood from?

A. Right in the fore part of the ship—in the bow.

Q. In the eyes of the ship? A. Yes, sir.

Q. Which side? A. The port side.

Q. At that time you and this man were carting this wood backward and forward for the purpose of chocking—dunnage? A. Yes, sir.

Q. You were carrying it in your arms?

A. Yes, sir.

Q. And you got that on the port side, in the between decks? A. Yes, sir.

Redirect Examination.

By Mr. PRICHARD.

Q. What time of day was it that you saw this barrel setting on the hatch coverings to dry?

A. Some time in the forenoon.

Q. What time of day was it that the accident happened? A. In the afternoon.

Q. About what time, if you recollect?

A. Between two and four o'clock.

Q. Do you know the names of all of the stevedore's gang that day?

A. I know the men that were working there that day; I don't know them all; sometimes there are strangers; but I know all the men that are here to-day.

DANIEL McLEAN, having been duly sworn, was examined as follows:

By Mr. PRICHARD.

Q. What is your business?

A. I am a stevedore, working on the wharf.

Q. Were you working on board the ship "Joseph B. Thomas" in April, 1892, when Jensen was injured?

A. Yes, sir.

Q. What part of the vessel were you in at the time of the accident?

A. Down in the forward lower hold.

Q. State all you know about the accident.

A. We were taking up the stage of case oil—clearing the hatch up; we were all working there together. I saw the barrel come down, and I suppose it came off the upper deck; it hit this man and knocked him down.

Q. Had you ever seen that barrel before?

A. I don't suppose so; I might, but not exactly to take any notice of it.

Q. Do you know who took the hatch coverings off that morning?

A. I don't remember that exactly—whether it was us or not; I couldn't say exactly.

Q. You don't recollect, of course, whether you helped take them off or not?

A. No, sir.

Q. The stevedore's men usually take them off?

A. Yes, sir, if they were going to work there; if not, the crew would take them off.

Cross-examination waived.

ALFRED SPROGEL, having been duly sworn, was examined as follows:

By Mr. PRICHARD.

Q. What is your business?

A. Working at stevedoring.

Q. Were you on the ship "Joseph B. Thomas" in April, 1892, when Jensen was injured?

A. Yes, sir.

Q. What part of the vessel were you in at the time of the accident?

A. In the forward part, on the port side, in the lower hold, standing by the side of him when he was hurt.

Q. State all you know about the accident.

A. I was standing by the side of him when he was hurt, and I was the nearest man to him. How the keg came to come down the hold I couldn't say, but it was halloed from above, "Under below!" Not knowing who did it, of course I jumped one side, and this gentleman tried to do the same thing, but the result was he got the keg upon his head. Whose fault it was, or anything like that, I can't say.

Q. Do you know who took the hatch covers off that morning?

A. No, sir; I couldn't say.

Cross-examination waived.

CHARLES O'DONNELL, having been duly sworn, was examined as follows:

By Mr. PRICHARD.

Q. What is your business? A. Stevedore.

Q. Were you on the ship "Joseph B. Thomas" in April, 1892, when Mr. Jensen was injured?

A. Yes, sir.

Q. What part of the vessel were you in?

A. Forward of the fore hatch, in the lower hold, lifting oil.

Q. State all you know about the accident.

A. All I know about the accident is that the man that was hurt was about two feet from me when the keg came down. I heard some one sing out, "Look out be-

low," and the first thing I saw was him lying back against the cases, knocked speechless.

Q. Do you know who took the hatch coverings off that morning?

A. No, sir; I don't. I don't remember.

Cross-Examination.

By Mr. EDMUNDS.

Q. It is customary, I suppose, for the stevedores to take them off, isn't it?

A. I don't think we took them off that morning. I am not certain; I wouldn't say for certain.

JOHN F. DAVIDSON, having been duly sworn, was examined as follows:

By Mr. PRICHARD.

Q. What is your business? A. Burden tender.

Q. Were you on the ship "Joseph B. Thomas" in April, 1892, when Mr. Jensen was injured?

A. Yes, sir.

Q. What part of the ship were you in at the time?

A. I was at the main hatch, splicing the hook in.

Q. In what part?

A. On the upper deck. We had a stage built over the top of the hatch. I was splicing it in, and I heard a halloo, and I went forward, and there was a couple of men had this stage slung in between decks. Mr. Nielson was one and Mr. O'Donnell helped him.

Q. That is, they were carrying Mr. Jensen out?

A. Yes, sir; I halloosed to the engineer to go ahead.

Q. You did not see the accident?

A. No, sir.

Q. You did not see the barrel?

A. No, sir; if I had seen it there I would have taken it away.

Q. Do you know who took the hatch coverings off that morning?

A. I don't know; I didn't see anybody lift them.

Cross-Examination.

By Mr. EDMUNDS.

Q. You were at the main hatch?

A. Yes, sir.

Q. That would be quite a distance in the ship from the fore hatch?

A. I couldn't tell you exactly how far.

Q. Nearly fifty feet, wouldn't it?

A. I couldn't tell you that exactly.

HANS NIELSON having been duly sworn, was examined as follows:

By Mr. PRICHARD.

Q. What is your business?

A. I am a stevedore; I was down below in the hold, like the rest of them.

Q. You were on the ship when Mr. Jensen was injured?

A. Yes, sir; in the lower hold.

Q. State all you know about the accident.

A. I heard them halloo, and I saw the keg come down.

Q. You didn't see anything that was going on up above, of course? A. No, sir.

Q. Do you know who took the hatch coverings off that morning?

A. No, sir; they were off when I came there.

JOHN BROWN, having been duly sworn, was examined as follows:

By Mr. PRICHARD.

Q. What is your business? A. Stevedore.

Q. Were you on the ship "Joseph B. Thomas" in April, 1892, when Mr. Jensen was injured?

A. Yes, sir.

Q. What part of the vessel were you in at the time of the accident?

A. On the starboard side, in the lower hold.

Q. State all you know about the accident.

A. I was down there, and I heard somebody halloo "Look out below!" I happened to run one side to get out of the road, and I saw the keg come down and strike this gentleman. I went out to the hospital with him.

Q. Do you recollect who took the hatch coverings off that morning?

A. No, sir; I don't. I was working on the wharf at that time, and I went down in the hold to help them out to get this stage of oil away.

Q. Do you know where all the stevedore's men were at the time of the accident?

A. There was some of them—the biggest part of them were down in the hold, I believe—that is eight, anyhow.

Q. Do you know how many men you had in the gang at that time? A. No, sir; I don't.

Cross-Examination.

By Mr. EDMUNDS.

Q. You don't know where the rest of them were, of course—they were scattered around?

A. No; they were scattered around.

Q. What time do you usually take the hatch coverings off when you come in the morning, or do you leave them off over night?

A. I don't know about taking them off—whether we took them off or not; I wasn't there; I was working on the wharf. We generally take them off at seven o'clock, when we go to work in the morning.

Q. It takes two stevedores to do that, don't it?

A. Yes, sir.

Q. There are two ring bolts, and one man takes hold of each corner and lifts it off?

A. Yes, sir. The hatch has nothing to do with the keg, though.

Q. You say the hatch coverings were off?

A. Yes, sir.

Q. You were on the starboard side, in the lower hold?

A. Yes, sir.

Q. The space between you and the between deck ceiling was how much—eighteen feet?

A. I couldn't say exactly how many feet.

Q. The space between the hatch of the main deck and the fore-castle was how much?

A. I never took a measurement of that; I couldn't tell you.

Q. How many hatch holes were there from the top-gal-lant fore-castle down to the lower hold?

A. I generally work on the wharf; I couldn't tell you that exactly; I don't remember.

Q. Do you remember the height of them, or anything about them?

A. No, sir.

Q. You don't know who took the hatch coverings off nor when they were taken off?

A. No, sir.

By MR. PRICHARD.—Q. When one hatch covering is put on top of another one, the top one rests upon the ring bolts?

A. Yes, sir.

Q. How about if the hatch coverings are the same size?

A. Well, there is no chance for the hatch to fall down. If there is anything placed on top of the hatch, certainly it will fall down in the hold.

Q. Are the hatch coverings level or are they curved?

A. I couldn't say.

HENRY HENDRICKSON, having been duly sworn, was examined as follows:

By MR. PRICHARD.—Q. What is your business?

A. A longshoreman, working down on the wharf.

Q. Were you on the ship "Joseph B. Thomas" in April, 1892, when Jensen was injured?

A. Yes, sir.

Q. What part of the vessel were you in at the time of the accident?

A. I was in the lower hold.

Q. State all that you saw of the accident.

A. All I saw about it, I heard somebody hallooing up above; then next I turned around, and I heard something come down the hatch, and I turned around and found Jensen laying on the bottom of the vessel and the keg rolling off of him. That's all I can state.

Q. Do you know who took the hatch coverings off that morning?

A. No, sir.

Cross-Examination.

By MR. EDMUNDS.—Q. You don't know whether they were taken off at all that morning?

A. No, sir.

Q. You were working with a gang on the wharf?

A. Yes, sir; I was working on the wharf. I was all around the vessel, too; that's the way I worked all the time.

Q. What time do the stevedores usually take those hatch coverings off—do they take them off in the morning or leave them off over night?

A. They generally take them off whenever they need

to; we take them off in the morning when we start to work.

Q. You generally take them off, do you?

A. The men in the hold generally take them off.

By MR. PRICHARD.—Q. At the time of the accident you were actually down in the lower hold?

A. Yes, sir.

By MR. EDMUNDS.—Q. You had been with a gang on the wharf and you were called on board?

A. Yes, sir.

JOHN GABLE, having been duly sworn, was examined as follows:

By MR. PRICHARD.—Q. What is your business?

A. Engineer for C. W. Davis.

Q. Were you on the ship "Joseph B. Thomas" in April, 1892, at the time this accident happened to Mr. Jensen?

A. No more than when he was hurt I hoisted him out of the hold and went up the gangway and helped to carry him ashore.

Q. Where were you at the time of the accident?

A. Out by the engine, on the wharf.

Q. Did you see the accident at all?

A. No, sir.

Cross-Examination.

By MR. EDMUNDS.—Q. You don't know anything about it?

A. No, sir; no more than I have said.

Q. You worked for Davis?

A. Yes, sir; I was engineer for him.

JENS P. JENSEN, having been duly sworn, was examined as follows:

By MR. PRICHARD.—Q. You are the plaintiff in this case and the man who was injured?

A. Yes, sir; I am twenty-nine years old.

Q. State all that you know about this accident that happened to you on the ship "Joseph B. Thomas."

A. I can't tell you nothing, because I know I was down there and put that oil away; that's all I do know, because I got struck and I didn't know myself for five weeks.

Q. What were you doing on the ship?

A. I was putting oil away.

Q. You were one of the stevedore's gang?

A. Yes, sir; I was on the wharf there.

Q. And you were called in to go down in the hold?

A. Yes, sir; I was working in the lower hold at the time of the accident.

Q. Did you hear anybody halloo from above?

A. No, sir.

Q. The first you knew was what?

A. I was laying up in the hospital in bed.

Q. How long did you stay in the hospital?

A. About fifteen or sixteen weeks.

Q. What did they do to you there?

A. They fixed my head up—operated on my head

twice, I think. That's what they say; that's all I know about it.

Q. Did you have any pain?

A. No, sir; not much. I can't speak very high.

Q. Since you have come out from the hospital what have you been doing? A. Nothing.

Q. Why have you been doing nothing?

A. Because I can't.

Q. Can't you work?

A. No, sir.

Q. What is the trouble?

A. Because I have no use of my right arm.

Q. How are your legs?

A. The leg is pretty good; sometimes I can't walk without a stick.

Q. Your right arm, however, you can't use?

A. No, sir; I have no use of it at all.

A. Can you grasp anything in your right hand?

A. No, sir.

Q. How are your left arm and leg?

A. All right.

Q. Do you sleep all right?

A. Oh, yes; I sleep all right.

Q. Do you eat all right? A. Yes, sir.

Q. How is your right arm and hand—have they been improving?

A. No, sir; not much. Well, just a little bit. First I couldn't move it at all.

Q. So that it has improved a little and you can move it a little? A. Yes, sir.

Q. What kind of health had you had prior to this accident?

A. I was always healthy; I never was sick.

Q. What has been your business?

A. Working along shore for the last ten years.

Q. Had you ever had an injury before?

A. No, sir.

Q. Something has been said here about your having an injury to the back of your head.

A. No, sir.

Q. You did not have any injury to the back of your head?

A. No, sir.

Q. What wages were you earning at the time of the injury?

A. Three dollars a day of ten hours.

Q. How long had you been getting those wages?

A. For the last five years.

Q. Are you dependent upon your earnings for your living—have you any means?

A. No, sir.

A. What supports you now?

A. Oh, well, I run my chance; somebody pays my board one week, and another another week.

Q. Then you are living on charity?

A. Yes, sir.

Q. Are you married?

A. No, sir.

Q. How is it with your talking; does it affect your talking any?

A. Sometimes it does and sometimes it don't.

Cross-Examination.

By MR. EDMUNDS.—Q. You say your appetite is good and you sleep well?

A. Yes, sir.

Q. Your arm is getting better slowly?

A. Yes, sir; it is slowly, too.

Q. Your left side is all right?

A. Yes, sir; the left side is all right.

Q. You subpoenaed these witnesses today that you had here, I suppose, did you?

A. Yes, sir.

Q. You subpoenaed them yourself?

A. Yes, sir.

Q. You say you got three dollars for ten hours' work?

A. Yes, sir.

Q. You worked for Davis? A. Yes, sir.

Q. Did you have steady work?

A. Yes, sir; we had steady work.

Q. You do not mean to say that you had it every day?

A. Pretty nearly; I didn't lose a day in a month, I don't think.

Q. Suppose you did not have a job?

A. We always had it; they generally have two ships laying there; besides they have a big line of steamers running.

Q. There is no work at this season of the year, when the river is frozen up, is there?

A. There is plenty of work.

Q. There is no stevedore work, is there?

A. Yes, sir.

Q. You say that you were unconscious from the time that you were struck by the barrel until you woke up in this hospital and found yourself in bed?

A. Yes, sir.

Q. Was that after the operation had been performed?

A. About five weeks, I think, from what the doctor said.

Q. I mean when you first woke up in the hospital; do you say that was five weeks after you went in there?

A. Yes, sir; I think four or five.

Q. That is to say, you didn't know anything from the time of the accident until four or five weeks after you had been in the hospital. Is that right?

A. Yes, sir.

Q. Your general health is pretty good, with that exception, isn't it?

A. Yes, sir.

Q. You don't remember of ever having had anything to hit you before in the head?

A. No, sir; I never did.

Q. What is your nationality?

A. Dane.

Q. How long have you been in this country?

A. About twelve years.

Q. What were you before—a sailor?

A. No, sir; I was a laborer.

Q. You have no family at all of any kind over here except yourself?

A. No, sir.

Redirect Examination.

By MR. PRICHARD.—Q. You heard today the testimony of the doctor that you walked into the hospital yourself and talked. Have you any recollection of that at all?

A. No, sir.

Adjourned.

Philadelphia, February 28th, 1893.

Present: The Commissioner, Mr. Craig; Messers. Prichard and Edmunds, of counsel.

PATRICK O'DONNELL, recalled.

By MR. PRICHARD.—Q. Since the last meeting have you ascertained positively whether the men who testified here at the last meeting, viz., yourself, Martin Ryan, John Hughes, Chris. Nelson, Daniel McClain, Alfred Sprogel, Charles O'Donnell, John F. Davidson, Hans Melson, John Brown, Henry Hendrickson, John Gabel, Jens P. Jensen, constituted the entire stevedore gang who were working on the ship "J. B. Thomas" at the time of the accident to Mr. Jensen, or whether there were any others not included in that list?

A. I discovered there was another man in the gang—one more; that was by looking at the pay roll.

Q. What was his name?

A. Charles King.

Q. Was he working on the vessel or on the wharf?

A. Working on the vessel at that time.

Q. Do you know what his address is?

A. No, sir; I do not.

Q. He is still employed by Mr. Davis?

A. Yes, sir.

Q. Were there any others besides Charles King or the ones which I have mentioned?

A. No, sir; the pay roll shows that. I fetched the book up here with me. (Witness produces book). On the right hand side of this book is the time for the week after April 16th, 1892. It is kept in lead pencil and is marked "Ship 'Joseph B. Thomas.'" "

By MR. EDMUNDS.—Q. What day of the week was this accident upon?

A. Monday, I believe; the beginning of the week.

Q. How many do you make as being engaged working on that Monday, by this book?

A. I did not count it up. The timekeeper gave it to me. I told him to have it ready.

Q. Is it not in your handwriting?

A. No, sir.

Q. There appears to be working Monday a man by the name of Jenks; who is he?

A. That is the way we put his name down, "Jenks"—"Jenks Jensen." We write his name down just "Jenks"—I do. The timekeeper may have it "Jens Jensen."

Q. You were working there also?

A. Yes, sir.

Q. I find here that all these names of the men who worked on Monday in this book are ticked except Jenks and Charles King.

A. Let me look at it, and I will explain that to you. He was working there. He ain't ticked.

Q. Don't you see that Jenks' name is not ticked?

A. No, sir.

Q. And he is put down as being there ten hours on Monday?

A. Yes, sir.

Q. Charles King is not ticked, either?

A. I could not say. I did not look at it.

Q. He is put down, also?

A. Yes; he is an extra man; that wasn't here that they found out was there.

Q. That is to say, this book shows that Jenks and Charles King worked on Monday?

A. Yes, sir.

Q. But their names are not ticked?

A. No, sir.

Q. All the rest of them who worked on Monday and who are here are ticked; is that right?

A. I could not say. I didn't do that ticking. I told the timekeeper to get the book ready, so as to have it ready. I am not ticked either by the timekeeper's notes.

Q. You are not ticked before that, either?

A. I am not ticked here.

Q. I suppose there was some reason?

A. No reason I know. It is only just to show who was and who was not there.

Q. When was this book made up; do you know?

A. It is made up every week, and then it is put down in a big book.

Q. It is taken from this book into a big book?

A. Yes, sir.

Q. Who carries this book?

A. The timekeeper carries that book.

Q. Who is the timekeeper?

A. Charles Hanson.

Q. Was he working there, also?

A. No, sir.

Q. Then the information he gives is derived from where?

A. From the man keeping time.

Q. Does he know which men work?

A. He goes aboard the ship and takes the men's names that are there.

Q. I suppose you pay them according to that book, do you?

A. Yes, sir; according to the book.

Q. You know that King was working there with that gang?

A. I do; yes, sir.

Q. You had forgotten that?

A. Yes, sir.

Q. You feel pretty certain that that is all who were working there in your gang?

A. Yes, sir; the book will show that.

Q. But the book is not in your handwriting?

A. No, sir.

Q. Indeed, you don't know anything about it except you brought it up here today?

A. That is all. The time is given there to the timekeeper; he comes there and gets it.

Q. Whose handwriting is that in lead pencil?

A. The timekeeper's.

Mr. PRICHARD.—I offer the book in evidence, and ask that the stenographer copy on the notes the names of the men and the hours they worked on Monday.

(Mr. Edmunds objects to the book being offered in evidence as it is incompetent, irrelevant, and immaterial, and for the further reason that the book has not been proven, or the entries thereof, in the manner required by law to insure its competency.)

The copy of the portion of the book which Mr. Prichard requested the stenographer to make is as follows:

	M.
✓ Pat O'Donnell	10
✓ Jno. Hughes	10
✓ Dan McClain	10
✓ Mart. Ryan	10
✓ All. Sprogel	10
✓ C. O'Donnell	10
✓ Fred Davidson	10
✓ C. Neilson	10
✓ Jno. Brown	10
Jenks	10
✓ H. Hendricks	10
Chas. King	10
✓ Hans Nelson	10
✓ Jno. Gabel	10

Thursday, April 27th, 1893, 3 P. M.

Present: The Commissioner, Mr. Craig; Messers. Prichard and Edmunds, of counsel.

Dr. WILLIAM L. TAYLOR, having been duly sworn, was examined as follows:

By MR. PRICHARD.—Q. You are a graduate of what college?

A. The University of Pennsylvania.

Q. How many years' experience have you had as a practicing physician?

A. I have been practicing for seventeen years in the city of Philadelphia. My office is 1340 North Twelfth street.

Q. Have you recently, at my request, made an examination of Mr. Jensen?

A. I have. I made examinations on the 6th and 9th of April, the present month.

Q. Please state in your own way the result of your examinations.

A. I found on the left side of the head an irregular scar measuring four and three-quarters inches in length, with depression and some loss of skull; paralysis on the right side of body, most marked in the right arm; atrophy of the muscles of the arm and leg, also shoulder, and partial loss of sensation of the whole right side of the body; a condition of mental hebetude.

Q. State what, so far as you know, judging from the

physical condition of Mr. Jensen, was the cause of that condition.

A. The cause of that condition has been injury to the brain structure, and most probably laceration, with depression of the skull—thickening of the membranes of the brain—continued pressure by that thickening.

Q. Is his present condition the result of natural disease or artificial injury?

A. It is, no doubt, due to injury. His history is a clear one, nonsyphilitic in character. The location of the injury has produced the conditions which he complains of now. He has injury on what we term the motor centers—-injury to the centers of the brain, which would produce loss of power on the opposite side of the body.

Q. You say the injury would produce the results. To what injury do you allude?

A. Injury to the skull and injury to the brain.

Q. Did he give you any information as to that injury?

A. Yes, sir; that he was injured on board ship, or in the hold of a ship, by the falling of a cask, and necessarily the crushing of the skull, subsequent loss of consciousness and so on.

Q. And that is the injury to which you refer when you said that these results might be attributable to it?

A. Undoubtedly.

Q. What is the effect of his present condition upon his present capacity to work?

A. As far as his muscular capacity is concerned, I should consider that he had not sufficient muscular power in the right side of the body to do any work with the arm.

As far as walking is concerned, he could walk moderately well by dragging the right leg after him. The condition of his mind is such that memory is necessarily defective, and he would not be mentally sufficiently accurate for work.

Q. What are the probabilities, from a medical standpoint, of the permanency of these injuries, or of his gradual recovery?

A. The results of the injury will necessarily be permanent, and increasing in severity, I believe. I believe there will be a greater loss of muscular power, as those muscles atrophy by time. I believe that the brain will ultimately become weaker. There is a possibility, and a grave possibility, of epilepsy supervening. There is also a possibility of imbecility or insanity—not only a bare possibility, but a grave possibility. That is the condition which occurs frequently after injuries of this kind. Abscesses of the brain may supervene.

Q. If I understand you correctly, then, there is no medical probability of any increase of earning capacity in his case?

A. I believe that there is not any possibility of increasing earning capacity, and I believe that his earning capacity, which is virtually nil now, will be diminished as he becomes older—if there is any earning capacity at all now.

Q. Do you know his age?

A. Thirty-one. There were several conditions of which he complained.

Q. State whether in your examination there were any

indications of other troubles or diseases which would aggravate his present condition.

A. There is no evidence of any syphilitic trouble that I could find. I inquired very particularly as to that, and made efforts to find any evidence of constitutional disease, syphilis, and so on; there was no evidence of it.

Cross-Examination.

By MR. EDMUNDS.—Q. You say you are in active practice in Philadelphia and have been for seventeen years?

A. Yes, sir.

Q. This man came to you himself, did he?

A. He was sent to me by Mr. Prichard.

Q. He came by himself?

A. The first time he came by himself. The second time he had a man with him.

Q. Where is your office?

A. Twelfth and Master. He came up there.

Q. Did he tell you where he lived?

A. He did. He lived on Prime street.

Q. That is about three miles from your office, is it not?

A. Fully that, I should judge.

Q. He came with a note from Mr. Prichard, did he?

A. No; I do not think he had a note, as far as I can remember now.

Q. What did he tell you when he came?

A. He told me that he came from Mr. Prichard.

Q. Did he tell you for what purpose?

A. For the purpose of examination.

Q. He gave you his history himself in detail?

A. Yes, sir.

Q. He told you what his life had been and what troubles and diseases he had had?

A. Simply by my questioning him as to the possibility of syphilitic trouble.

Q. Did you not ask him about anything else?

A. I asked him if he had had any disease of any kind which could possibly lead to trouble of that kind.

Q. Then your inquiries to him were of the same character and to the same extent as you would have made of any other patient who came there for examination?

A. Precisely.

Q. He volunteered about as much as any patient usually volunteers, and the rest of it you obtained by questions; is that true?

A. Yes, sir.

Q. You say you examined him. State the process of examination in detail.

A. I examined him by means of stripping the clothing from the body, by measurements and by puncturing the skin on both sides of the body to ascertain the difference in sensibility on the two sides; by the use of a Faradic battery for the purpose of ascertaining the amount of electro-tractility in the muscles.

Q. He was stripped to do that?

A. Yes, sir; the object of the measurement was to ascertain if there had been any wasting of the muscles.

Q. The object was to ascertain whether the measurement of the muscles upon one side was symmetrical, or the same size as those on the other side?

A. Yes, sir.

Q. Have you never seen in the course of your practice a difference in the size of the muscles on opposite sides in people in perfect health?

A. Yes, sir; the right side is always larger than the left where it is a right-handed person.

Q. Then you have seen marked occasions of dissymmetry in perfectly healthy subjects?

A. Yes, sir. In perfectly healthy people they are larger on the right than on the left, where they are right-handed; but in this case the muscles on the right side of the body were atrophied.

Q. Would not that result from the absence of use for a limited time?

A. Do you mean of the whole side of the body? It might.

Q. I suppose there are very few people who are perfectly symmetrical on both sides?

A. Very few.

Q. Did you ever see one in your lifetime?

A. I have measured quite a number, and I do not believe I ever saw one completely symmetrical.

Q. Indeed, one side of a man's face is very seldom like the other side?

A. That is so; yes, sir.

Q. As to the Faradic battery, state how you applied it.

A. I applied it by means of moist electrodes applied from the origin and along the body of the muscle.

Q. Beginning at the origin, you put what pole there?

A. The positive pole, and the negative along the

course of the muscle. It matters very little which pole is placed to the origin and which along the body of the muscle. It produces the same effect.

Q. The object being to place one pole at the seat of the injury and the other along the line of the muscle presumed to have been injured or defective?

A. Yes, sir.

Q. What is the effect of that in a healthy muscle?

A. The muscle will contract powerfully.

Q. That is, it will reply spasmodically to the touch?

A. Spasmodically, or with a tonic reaction, according to the method of application.

Q. I speak now of the method in which you applied it.

A. My application was intended to produce spasmodic contraction of the muscles.

Q. That would have been the result if the muscles had been in a healthy condition?

A. Yes, sir.

Q. Did you not find that the muscles did reply to this treatment?

A. I did. The muscles did reply. You will find that where there is any muscular structure left there will be a response, no matter how small a quantity of muscle there may be left.

Q. So that, in point of fact, electricity, for the purpose of determining the condition of the muscles, is relative in its effect?

A. It is, certainly, according to the size of the muscle.

Q. That is to say, the healthier the muscle, the more positively it will reply?

A. Yes, sir.

Q. Where did you put the positive pole? State the locality.

A. At the origin of the muscle.

Q. What muscle?

A. All the various muscles of the arm, and leg besides.

Q. You put it at the inception of the muscles which you were experimenting upon?

A. Yes, sir; one group of muscles after the other.

Q. Those were upon the right side?

A. Yes, sir.

Q. You ran with the other pole along the course of the muscle until its insertion at the other end?

A. Yes, sir.

Q. Gradually watching its effect, I suppose, and there was some reply?

A. Yes, sir.

Q. Was the battery of much strength?

A. It is an ordinary Fleming battery; a powerful battery that I have used for some time.

Q. Is it a hand battery?

A. No; an ordinary liquid battery.

Q. You say it was a wet battery. Do you mean that you had a sponge on it?

A. I mean that the electrodes were wet. They were moistened with hot water.

Q. The effect of hot water is to soothe the muscle, is it not--hot applications of any kind, unless they are too hot?

A. Yes. If they are too hot they will irritate the muscles?

Q. But the effect of warmth upon muscles is to soothe them?

A. Yes, sir; while a dry electrode does not permit the passage of the current so readily as a wet electrode.

Q. But it is quicker to reply?

A. Yes, sir.

Q. Did you experiment in the same way upon the muscles of the man's body on the opposite side?

A. I did.

Q. Did you find any marked difference between them?

A. The difference was marked between the two sides of the body.

Q. Was he better able to use his left arm than he was his right?

A. Many times.

Q. If the right side of the body had been quiescent for five or six months, the appearance of the muscular system on the right side would be different from that on the left, anyhow, would it not?

A. Yes, sir.

Q. Was this examination made upon his first visit?

A. The general examination, the measurements and so on, were made at his first visit. The electrical examination was made at the second visit.

Q. Then you were not satisfied with your first examination?

A. At the first examination the fluid of my battery was not sufficiently strong, I thought, for a satisfactory examination, and consequently I replenished my battery.

Q. You do not know anything about what this man's condition was at the time he was hurt?

A. No sir.

Q. Do you know when he was hurt?

A. He gave me the date.

Q. Do you remember it now?

A. April 11th, 1892.

Q. So that you examined him about a year after the injury?

A. Yes, sir.

Q. You could not, of course, have told whether there was any improvement in the man's condition between the time that he was hurt and the time when you examined him?

A. I could not.

Q. Might any of these conditions which you saw in the man, about which you have testified, be explained as the result of the treatment at the time of the injury?

A. No sir.

Q. Might any of them be explained as the result of neglect at the time of the injury?

A. No, sir.

Q. Give your reasons for stating that.

A. Simply for the reason that the local evidence of brain injury would be sufficient in itself to account for the general condition.

Q. Brain injury is susceptible of favorable treatment in these days, is it not?

A. It is.

Q. And it is possible to remove even particles of the brain?

A. It is.

Q. Not infrequently portions of the skull are removed?

A. That is frequently done.

Q. Did you see about this man any evidence of any former injury of any kind?

A. No, sir.

Q. Did you examine to see whether he had any?

A. I examined to see if there had been any injury to the skull.

Q. One of the physicians who has heretofore been examined in this case did discover evidences of former injury to his skull.

A. I did not find it.

Q. You said something about several conditions of which he complained; what did you mean by that?

A. One was partial loss or loss of sexual power; another was partial loss of control of the bladder—partial paralysis of the sphincter of the bladder.

Q. That was the result of an injury to a nerve center?

A. Yes, sir.

Q. Nerve injuries, or injuries to the nervous system are within the control largely of medical treatment, are they not?

A. They are; if there is no laceration or permanent pressure upon the brain or spinal chord.

Q. That pressure, however, with proper medical or surgical treatment might be removed?

A. Not in some cases. Where there is a brain cicatrix, that would be, if extensive, impossible to remove with relief of symptoms.

Q. I do not understand exactly how an injury at the brain end of the spinal chord could affect the sphincter of the bladder; can you explain?

A. I explain that by general injury to the brain tissue; it has been produced through the necessary paralysis of the muscles, not only of one side of the body, but also the sphincter muscles, which may occur under such circumstances.

Q. Have you seen similar cases?

A. I have seen similar cases where there has been paralysis of the sphincter due to brain concussion—due to brain laceration.

Q. Did you examine this man's eyes?

A. I did not.

Q. Your examination was principally with the electric current and measurements?

A. The electric current and measurements and my efforts to ascertain the difference in sensibility of the two sides.

Q. What did you use for the purpose of ascertaining the difference in sensibility?

A. I have a needle which I carry in my pocket case, which answers the purpose readily.

Q. Then it is done by puncturing?

A. Yes, sir.

Q. You tried that on both sides of the body?

A. Yes, sir.

Q. You tried it within the view of the patient? He saw what you were doing?

A. I believe at the time he had his eyes closed. I am not quite certain of that. I generally have their eyes closed at the time, but I am not certain whether that was the case with him or not.

Q. He is otherwise physically strong, is he not?

A. He is a strong, muscular man.

Q. Did you find any diminution of the size of the muscles in his legs?

A. There was a difference between the right and left—not so marked as there was between the right and left arm.

Q. Did you try him to see whether he could hold anything in his hands?

A. I did on the right.

Q. Did he have any difficulty in holding things?

A. His grasp was imperfect, unsteady and uncertain.

Q. What did you give him to hold?

A. He held my hand, I know, for one thing; he held fast to that—grasped that. I noticed him hold his cane without his knowledge, so as to see just the amount of power which he had in the hand.

Q. He held it?

A. Yes, sir; but very unsteadily; with a purchase that was very uncertain.

Q. Are you a homeopath or an allopath?

A. I am a regular physician, an allopath, so called.

Q. If this man had had a contusion of the lower posterior portion of his skull at the same time, it would be possible that all the conditions that you have mentioned might be referable to that?

A. No, sir; I believe not.

Q. You do not think an injury in the position which I have mentioned might result in those troubles?

A. No, sir.

WILLIAM B. GRAY, having been duly sworn, was examined as follows:

By MR. PRICHARD.—Q. What is your business?

A. Clerk of the Pennsylvania road.

Q. Where are you stationed?

A. At Reed Street Wharf.

Q. Do you remember going on board the ship "Thomas" on April 11th, 1892, with Mr. Fitzgerald?

A. I remember going on board with Mr. Fitzgerald.

Q. Were you on board at the time the accident happened to Mr. Jensen?

A. Yes, sir.

Q. State in your own way all you know in reference to it. In the first place, how came you to go on board?

A. I went aboard for a piece of rope. I asked Mr. O'Donnell, the boss of the stevedores, and he said he hadn't any, and called to the mate. The mate said that he would get me a piece. The mate was about climbing up the forward stanchion of the ship to the main deck. The hatching was laying there; that is, the covering of the hatch was laying forward of the hatch, and the cask sitting on the covering of the hatch; and as the mate came up to get hold of the combings Mr. O'Donnell gave him a lift, and one of the men helping him there, I supposed him to be a sailor, tread on the end of the hatch and threw the cask up in the air, and it went down in the hold. Mr. O'Donnell was helping the mate.

Q. That is all you know of the accident?

A. Yes, sir.

Cross-Examination.

By MR. EDMUNDS.—Q. Where were you standing, forward or aft of the hatch?

A. Aft of the hatch,

Q. Which hatch was it?

A. The forward hatch.

Q. The hatch covering was where?

A. Forward of the hatch.

Q. Between decks, or on the spar deck?

A. Between decks.

Q. You were standing on the deck above?

A. Yes, sir; the main deck.

Q. The mate was coming up out of the lower hold?

A. Yes, sir.

Q. On the forward stanchion?

A. Yes, sir.

Q. When the mate had got about as high with his head as the top of the hatch in the between decks, O'Donnell and another man attempted to help him?

A. I saw O'Donnell attempt to help him.

Q. Some one stepped on this hatch covering?

A. Yes, sir.

Q. That produced the fall of the barrel?

A. Yes, sir.

Q. Are you prepared to swear with any certainty who it was that stepped on that hatch covering?

A. No, sir.

Q. Are you willing to swear that the other man who was assisting O'Donnell was a sailor connected with the ship?

A. No, sir.

Q. O'Donnell was one of the stevedore's gang, was he not?

A. Yes, sir; he was foreman.

Q. You were not connected in any way either with the ship or with the stevedores?

A. No, sir.

Q. Do you remember how many holds that vessel had? She had a lower hold and between decks. Had she any more than that?

A. I could not say with certainty.

Q. About what was the distance from where you were standing to the between deck where the hatch coverings were?

A. About eight feet.

Q. There was no deck above you at all?

A. No, sir.

Redirect Examination.

By MR. PRICHARD.—Q. Where did you say the hatch coverings were?

A. Forward of the hatch.

Q. On which deck?

A. The deck of between decks.

Q. Not on the same deck that you were?

A. No, sir.

Q. Where was the barrel?

A. It was on the deck between decks.

Q. Where was the mate coming to? Was he coming up to the deck where you were?

A. No, sir; he was coming up to the deck of between decks.

Q. So that you were on the deck above the deck to which the mate was coming?

A. Yes, sir.

Q. O'Donnell was on the same deck on which the hatch coverings were?

A. No, sir.

Q. Which deck was he on?

A. He was on the deck below that.

Q. I suppose O'Donnell helped the mate from below?

A. Yes, sir.

Q. Who helped the mate from above?

A. Nobody helped him from above. The man that upset the cask was to help him.

Recross-Examination.

By MR. EDMUNDS.—Q. How many men were between decks?

A. I could not say.

Q. There was more than one, wasn't there?

A. Yes, sir.

Q. They were men, all of them were they not?

A. That I cannot say. I know there were some boys around the ship. I cannot say whether they were between decks or where they were.

Q. This man who tried to help the mate up—was he a man?

A. Yes, sir.

Q. Was he a full-grown man?

A. Yes, sir; he was not between decks.

Q. Who was the man that 'was between decks?

A. The man that upset the cask.

Q. Was he a full-grown man?

A. That I could not say. From where I was standing I could not see him.

Q. You did not see him at all, then?

A. No, sir.

CHARLES KING, having been duly sworn, was examined as follows:

By MR. PRICHARD.—Q. You are a stevedore?

A. Yes, sir; I work along shore.

Q. On April 11th, 1892, were you one of the men in the employ of Mr. Davis?

A. Yes, sir.

Q. Were you one of the gang working on the ship "J. B. Thomas" under Mr. O'Donnell as foreman?

A. Yes, sir.

Q. Do you recollect an accident happening to Mr. Jensen on that day?

A. Yes, sir.

Q. State where you were on the ship at the time.

A. I was in the between decks. I was carrying wood forward. That was dunnage. As I came back for another armload, I happened to see a cask come down the hold and I halloed. It hit Jensen on the head and threw him to the floor.

Q. Were you on the same deck that Mr. O'Donnell, the foreman, was on?

A. Yes, sir.

Q. Do you recollect where the hatch coverings were?

A. No, sir.

Q. The barrel came down from above?

A. Well, it came from above?

Q. That is all you know of the accident?

A. Yes, sir; that is all I know of the accident.

Q. You did not throw the barrel down?

(Objected to as leading.)

A. No, sir.

Q. You did not tread on the hatch coverings?

(Objected to as leading.)

A. No, sir.

Cross-Examination.

By MR. EDMUNDS.—Q. What are you doing now?

A. I am working on the wharf for Mr. Davis.

Q. Were you working for Davis a month ago?

A. Yes, sir.

Q. Have you been working for him right along?

A. I have been working for him ever since before the accident happened, all the time.

Q. Do you know why you were not produced here at the examinations before?

A. No, sir.

Q. Did anybody ask you to come?

A. No, sir; not until I was told of it, and then I was surprised that I did not come when the rest of the men came.

Q. How long has it been since you were told of it?

A. I could not say. The foreman told me about it, Mr. Hanson.

Q. How long do you think that was?

A. The very day that Mr. O'Donnell came up here; that is the day that it was told to me.

Q. After the other men had been examined?

A. Yes, sir.

Q. Where was this cargo being stowed at the time of the accident?

A. In the lower hold.

Q. Do you mean right next to the skin of the ship?

A. Yes, sir.

Q. The deck above that was what?

A. Between decks.

Q. The deck above that was what?

A. The deck of the ship.

Q. The spar deck?

A. Yes, sir.

Q. So that all she had was her between decks and the lower hold for cargo?

A. Yes, sir; as far as my knowledge went.

Q. You were on the between decks?

A. Yes, sir. I was rolling a barrel of oil out of the way to make a gangway for me to walk in and get the dunnage away.

Q. This barrel came from above?

A. Yes, sir.

Q. Therefore it must have come from the main deck?

A. It came from the main deck and struck this gentleman on the head.

Q. There was no barrel or hatch covering on the deck where you were working?

A. No.

Q. You would have been certain to have seen them if they had been there because you were working there, were you not?

A. Yes, sir.

Q. You were clearing out the place for the purpose of having room to work?

A. Yes, sir; getting some dunnage wood for the men below.

Q. You were going to pass dunnage wood down in the hold?

A. Yes, sir.

Q. How many men were at work there with you?

A. On my side there were three men and the foreman.

Q. Were you forward or aft?

A. Forward. On the other side, to my knowledge, there were two men.

Q. They were the stevedore's men?

A. Yes, sir.

Q. The ship kept her dunnage forward?

A. Yes, sir.

Q. Was that barrel of oil part of the ship's stores?

A. No, sir.

Q. Was it part of the cargo?

A. Yes, sir.

Q. Where was it to go?

A. It was to go in the lower hold. The dunnage I gave them was to chock off with.

Q. Therefore, the oil that you were rolling was for the purpose of being loaded in the lower hold?

A. Yes, sir; from the between decks down.

Q. Was there any more of it there?

A. Yes, sir.

Q. How many barrels, do you suppose?

A. Indeed, I could not say.

Q. What were the other men doing?

A. They were rolling oil and hooking oil on.

Q. Hooking it on to lower from between decks down into the lower hold?

A. Yes, sir.

Q. Did you see the mate of the ship coming up from the lower hold?

A. No, sir; but I saw the mate of the ship down in between decks, and then I could not tell if he went up or not. You see, I went back to my work again.

Q. You do not know whether or not that was before or after the accident? A. No, sir.

Q. The people who were working around there were all men in your gang? A. Yes, sir.

Q. They were all men, so far as you know, that were working around there that you saw?

A. Yes, sir.

Q. You did not notice whether there was anybody on the upper deck or not, did you?

A. No, sir; I did not.

Q. Did you have light at all down there except what came in the hatch?

A. Only the light from above.

Q. How far was this hatch from the knightheads of the ship, do you think?

A. Indeed, I could not tell how far.

Q. You know about how much room you have in there where you were working, don't you? I mean in between decks, where you were?

A. We had a pretty good space in there to work around.

Q. Thirty or forty feet?

A. No; not quite that.

Q. What was the distance from the deck of the between decks to the ceiling of the upper deck—the under side of the upper deck—the height of it?

A. It was higher than I am.

Q. Was it as much as eight feet?

A. I could not say that.

Q. How did you get from between decks to the upper deck—how did the men get up there?

A. They came down with a ladder. Sometimes they came down with a rope's end—skin down the stanchion.

Q. There was a ladder there then, was there?

A. No, sir; no ladder; ;not on that hatch.

Q. Then men who went up and down, went up and down the stanchions, did they?

A. Yes, sir; at the time to knock off there was a ladder put down. We could not work with any ladder. If it was put up it would be broken.

Q. It would be in the way?

A. Yes, sir; also it would be broken with the draft.

Q. You were loading with steam power?

A. Yes, sir.

Q. Did you have a burden tender on deck?

A. Yes, sir.

Q. Was he on the main deck?

A. Yes, sir.

Q. Right at the hatchway?

A. Yes, sir; right at the hatchway.

Q. Did it take more than one man for that?

A. No, sir. Just one man. He has a whistle and gives the signal when to go ahead and when to come back.

Q. But you had to have somebody to stop the swing. Was he on the wharf?

A. There was an engineer on the wharf.

Q. He cannot stop the swing—somebody must do that on deck?

A. The burden tender on deck generally has a rope made fast to a ringbolt, and throws it around the fall and steadies it that way himself.

Q. That is what he was doing that day, was it?

A. Yes, sir.

Q. Do you remember upon what side of the hatchway he was standing?

A. Yes, sir; the port side.

Q. Was the ship heading up or down the stream?

A. Up the stream.

Q. You were loading in the forward hatch?

A. Yes, sir.

Redirect Examination.

By Mr. PRICHARD.

Q. Has this ship a forecastle head above her main deck? A. Yes, sir.

Q. That is at the bow of the ship and is higher than the main deck?

A. Yes, sir; I can hardly stand under it.

By Mr. EDMUNDS.

Q. She had a poop aft? A. Yes, sir.

Q. I suppose the forecastle head is pretty nearly flush with the poop? A. Yes, sir.

By Mr. PRICHARD.

Q. So that the highest part of the ship on which people can walk would be the forecastle head and the poop, and the next lowest to that is the main deck?

A. Yes, sir.

Q. Below that is the between decks?

A. Yes, sir.

Signatures waived by consent of counsel.

Adjourned.

[Endorsed]: Filed August 8th, 1896. Southard Hoffman, Clerk

Deposition of Edward Peterson.

Called for Claimant. Sworn.

Mr. ANDORS.—Q. What is your name, age, residence and occupation?

A. My name is Edward Peterson; age, 51; residence, San Francisco; occupation, seafaring man.

Q. How long have you been going to sea?

A. About thirty-five years; between thirty-four and thirty-five.

Q. How long, if at all, have you been officer of any ship or vessel?

A. I have been officer of a ship now off and on for about twenty-eight years.

Q. Are you the officer of any ship now?

A. Yes, sir.

Q. What ship? A. The "Joseph B. Thomas."

Q. When did you join that ship?

A. The day before yesterday.

Q. When did you first join her?

A. In Havre.

Q. In what year? A. Last year.

Q. In what capacity did you join her?

A. Second officer.

Q. You sailed from Havre in her, did you?

A. Yes, sir.

Q. To what port? A. Philadelphia.

Q. And from Philadelphia you sailed to San Francisco? A. Yes, sir.

Q. About what time did you leave Philadelphia on the voyage of which you have last spoken?

A. I think it was the 20th of April, 1892; the 20th or 21st of April, 1892, we left the dock.

Q. What time did you arrive in San Francisco?

A. We arrived here September 19, 1892, on a Sunday night.

Q. Before the ship sailed from Philadelphia on her late voyage to San Francisco was there a man injured on board of her, one of the stevedores gang?

A. Yes, sir.

Q. About what time in the day was it, if you recollect?

A. In the afternoon.

Q. Do you recollect how long it was before the ship sailed?

A. No, sir; I don't. I couldn't say exactly. I think it was six or seven days; something like that. It might be more and it might be less. I am not exactly sure.

Q. At the time he was injured was the ship taking in or discharging cargo?

A. Taking in cargo.

Q. State if you know whether a stevedore was employed to store the cargo?

A. Yes, sir; a stevedore was employed.

Q. Where was the man when he was injured?

A. He was down in the lower hold forward under the fore hatch.

Q. At the time he was injured where were you?

A. I was up alongside the hatch combing on the main deck.

- Q. The forward hatch combing?
- A. Yes, sir; on the port side.
- Q. On the main deck? A. Yes, sir.
- Q. Where is that hatch situated, that is, the part of it that goes through the main deck?
- A. In forward of the foremast.
- Q. State whether it was or was not under the top gallant forecastle?
- A. Underneath the topgallant forecastle.
- Q. Then there was a hatchway through the topgallant forecastle directly above it?
- A. Yes, sir.
- Q. Who was standing there with you, if any one, alongside the hatch?
- A. There was no one just alongside of me, but there was one of the stevedore's men came along.
- Q. Never mind the stevedore's men. I mean of the ship's company?
- A. The third mate was a little way from me. He was not alongside of me. He was a little ways of me.
- Q. Outside of or underneath the topgallant forecastle?
- A. Underneath the topgallant forecastle.
- Q. Did you see the way in which the accident happened? A. Yes, sir.
- Q. Go on; state how it happened?
- A. There was a little keg standing on one corner of the hatch cover, on the port corner of the hatch cover, and one of the men happened to touch the top hatch cover on the starboard side and through that it started the

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keg off the hatch cover, and the keg went down through the hatch, and struck the man.

Q. Who was the man that trod on this hatch cover?

A. One of the stevedore's men. Which one it was I cannot say.

Q. It was one of the stevedore's men, but you do not know his name?

A. No, sir. I did not take particular notice which one it was.

Q. Were any others of the stevedore's men underneath the topgallant forecastle except this one that trod on the hatch?

A. I don't think there was.

Q. What was this stevedore's man doing when he trod upon the hatch cover?

A. I don't know exactly what he was doing. He just happened to come along and touch the hatch cover. Either he was going down in the hatch, or what he was going to do I don't know. I know he just happened to touch the hatch cover the least mite.

Q. Had this forward hatch cover been taken off that morning? A. Yes, sir.

Q. Who took it off?

A. The stevedore's men.

Q. State who took the hatch covers off in the morning when they went to work?

A. The stevedore's men.

Q. Where were these hatch covers piled?

A. In the forward part of the hatch coaming.

Q. State whether or not according to your experience

as an officer of a vessel, it is customary or usual, for the stevedore's men to take off the hatch covers when they go to work in the morning when they are taking in or discharging cargo?

A. Yes, sir; it is usual for stevedores to do that. It belongs to them to do it, to take the hatch covers off in the morning, and put them on before they go ashore in the evening.

Q. What sort of a keg was this?

A. A small pickle keg. There used to be pickles in it. The keg I should judge holds about four gallons.

Q. Then you saw this keg tipping over into the hatch did you say anything?

A. Yes, sir, I sang out, "Stand from under."

Q. Was there more than this one man that worked below in the stevedore's gang?

A. Yes, sir; there was a whole gang at work, but all went to one side except that man, and he never seemed to move at all. He did not seem to take any notice. All the rest went to one side.

Q. You say he did not seem to take any notice. Did you look down the hatch immediately?

A. Yes, sir; I looked down immediately when I sang out.

Q. Say if you saw the keg strike him, or if he was struck with it before you looked down?

A. No, sir; I see the keg strike him. As the keg went down I see it strike him.

Q. Then when the keg tipped over into the hatchway, you were standing right alongside the hatch coaming?

A. Yes, sir.

Q. On which side of the hatch, port or starboard?

A. On the port side of the hatch coaming.

Q. What was the reason that this hatch cover tipped when the stevedore's man touched it, or stepped upon it?

A. It was not laid down as it ought to be. It was not laid down solid. If the hatch coverings were put down as they ought to be, one on top of the other, there would not be any trouble attached to it, but they just put them down any way at all as they were always in a hurry.

Q. That is the hatch covers tipped on account of it being piled up; from the way in which they were piled up by the stevedore's men?

A. Yes, sir.

Q. How many hatch covers were there?

A. Three.

Q. Were they crowning at all?

A. Yes, sir; a little crown to the hatch.

Q. After the man was hit he was brought up, I suppose?

A. Yes, sir.

Q. Did you see him when he was brought up from below?

A. Yes, sir; I seen him when he was brought up.

Q. Did you notice whereabouts the keg had hit him?

A. It struck him on the head, somewheres. I did not see. I was only told.

Q. Never mind what you were told. You saw him when he was brought up?

A. Yes, sir; and I saw the blood.

Q. From his head or face?

A. From his head. I did not see the cut.

Q. Then he was taken ashore immediately?

A. Yes, sir.

Q. Will you look at the model now shown you, and marked claimant's Exhibit "A," and state what it is a model of?

A. That is a model of the bow of a vessel. That is the forward hatch on the main deck, and on the topgallant forecastle. (Pointing.)

Q. About how high is that topgallant forecastle on the "Thomas" from the main deck? How high are the timbers?

A. About five feet, I think. I think it is five feet. I would not say positively, because I never measured. I think it is about that. A little more or a little less probably.

Q. On which side of the hatch, on the main deck, were these hatch covers piled, forward or aft?

A. On the forward.

Q. How near to the hatch coaming?

A. As close as they could lay; as close as they could pile them alongside of the hatch coaming.

Cross-Examination.

Mr. HOLMES.—Q. What were you doing at the forward hatch at that time?

A. I was not doing anything. I was doing something under the top forecastle, and stopped to look down in the hatch to see what they were doing. We were taking in cargo and I looked down occasionally while they were taking in cargo.

Q. You had nothing to do with the loading of the vessel at that time? A. No, sir.

Q. And you mean to tell us then that just as this keg tipped over and fell down you happened to be looking down? A. Yes, sir.

Q. Just at that moment?

A. Just at that moment, yes, sir.

Q. What were you doing under the fore-castle head?

A. I don't exactly recollect what I was doing. I had underneath there two boys, and the third mate, finishing something I was doing. I cannot recollect now what I was doing. There is always something.

Q. How far was this work from the forward hatch?

A. I should judge about ten or twelve feet from the hatch.

Mr. ANDROS.—Q. That is where you had been at work? A. Yes, sir.

Mr. HOLMES.—Q. Had you finished that work?

A. Yes, sir.

Q. And just at that instant you walked over, and looked down, and down went the keg? A. Yes, sir.

Q. How high was the coaming to that hatch?

A. About eighteen inches, I guess; no, not so much as eighteen. I should say twelve inches. On the forward part the coaming is not so high on account of there being some thick planks, thicker than the deck.

Q. How much higher is the forward part of the deck there than the after part?

A. About an inch and a half.

Q. Is it not a fact that those coamings are more than a foot high even at the forward part of the hatch?

A. No, sir.

Q. That you are confident of.

A. That I am confident of.

Q. What made you first say about fifteen inches?

A. I was thinking about the main hatch.

Q. What is the size of that forward hatch?

A. I think she is about six or eight feet square.

Q. Six or eight feet square?

A. Yes, sir. It might be a little more.

Q. It was entirely open at that time, was it not?

A. Yes, sir.

Q. How is that hatch cover divided; into how many pieces?

A. Three parts.

Q. How high are those parts each. How thick?

A. Each is about four inches.

Mr. ANDROS.—Q. Four inches high?

A. Yes, sir, four inches.

Mr. HOLMES.—Q. How much of a crown is there to them?

A. Not much, just a little.

Q. Hardly perceptible to the eye?

A. Yes, sir; you can see it.

Q. Is it not a fact that when these three hatch covers of the forward hatch are piled, the one on the other, the lower one being flat on the deck, that they stand solid?

A. They stand pretty solid; yes, sir. One of them is laid on the other.

Q. Don't they stand absolutely solid?

A. They stand solid enough so that they would not do any damage.

Mr. ANDROS.—Q. That is when they are piled down as they ought to be?

A. Yes, sir; when they are piled down as they ought to be. There is a ring bolt in each corner of the hatch to lift them with, and when those hatches are not laid down properly they will wobble.

Mr. HOLMES.—Q. How near the forward part of the forward hatch did these covers lie?

A. They lay right close against the hatch coaming; as close as they could lay.

Q. You say it is customary for the stevedore's men to remove those and put them on? A. Yes, sir.

Q. Did you see them taken off that morning?

A. No, sir; I did not see them taken off that morning. I did not see exactly when they took them off. I see the way they were laying, and I cautioned the foreman stevedore many a time to lay them hatches down as they ought to be, because I said some one will get hurt yet the way you are throwing them down.

Q. You are not speaking of the forward hatch covers?

A. Yes, sir.

Q. Did you caution him that particular day?

A. No, sir; not that particular day, but several times I done it.

Q. You did not see who took them off that morning?

A. No, sir. I know the stevedore's men took them off. My men did not take them off.

Q. You do not know that from the fact that you saw who took them off or not?

A. No, sir; I did not see.

Q. Before this accident that day had you noticed that these covers were not properly laid on the deck; this particular day and these particular covers?

A. Yes, sir, I did. I see the way they were laying, but it was so usual to see them that way nearly all the time. When I had time to do it myself I altered them.

Q. Why did you not alter them that day?

A. I had not time to do it, and it was not my place to do it.

Q. How long would it have taken you to do it?

A. It would not have taken long to do it.

Q. Would it not have taken about a small part of a minute?

A. About a couple of minutes, but I did not happen to take any particular notice of it.

Q. Who do you say was with you there at the forward hatch?

A. The third mate was underneath the fore-castle too—the third officer, and there was a couple of the boys underneath the fore-castle too, but they were in the forward part—away forward.

Q. A man cannot stand erect on the main deck there under or near that forward hatch, can he?

A. No, sir, not straight.

Q. How tall are you?

A. I am five feet and a half. Five feet four.

Q. You have to stoop even? A. Yes, sir.

Q. Or your head would touch the ceiling of the top-gallant fore-castle?

A. It would touch the beam.

Q. This vessel is loading now?

A. Yes, sir.

Q. How are those covers piled this morning at the forward hatch?

A. Laying on the forward part of the hatch.

Q. Piled one on top of the other?

A. Yes, sir.

Q. And laying solid?

A. Yes, sir. Another thing, the way it is now, there is a regular cage around the hatch. It is boarded round the hatch up and down for the stevedore's men to work the cargo. They did it themselves so that the sling shall not go underneath the hatch coamings.

Mr. ANDROS.—Q. Those are guys to prevent the cargo from swinging outside the coaming when it goes down?

A. Yes, sir.

Q. That is outside the coaming of the main deck?

A. Yes, sir.

Mr. HOLMES.—Q. You mean running from the main deck up to the topgallant forecandle?

A. Yes, sir.

Q. I am speaking of this morning now. Is it not a fact that that is only on the shore side of the vessel?

A. Yes, sir, on the starboard side, and on the forward part.

Q. Forward here as well? (Pointing on the model.)

A. Yes, sir.

Q. This morning who took off those hatches?

Mr. ANDROS.—I object to that as immaterial.

A. The hatch was not taken off.

Mr. HOLMES.—Q. The hatch was left open all night?

A. Yes, sir, the main deck hatch.

Q. The forward hatch? A. Yes, sir.

Q. Who took them off when they were last taken off?

A. I was not on board, and couldn't say. I suppose the stevedores did.

Q. You don't know, then?

A. No, sir, I was not on board.

Q. How long had that keg been on this hatch cover before it fell?

A. That is more than I could say. I did not see how long it stood there.

Q. You saw the keg?

A. The first I saw of the keg was when I came forward and was through with my work, and stood on the fore-castle. I saw the keg standing in the corner of the hatch.

Q. How long before the keg fell did you see it there?

A. I couldn't say exactly. It is so long since now, and I did not carry it in my memory.

Q. Was the first you saw of the keg when it rolled over and down the hatch, or had you seen it there before that?

A. As I cast my eye on it I seen the keg and it went down.

Q. Was the keg empty or full?

A. No, sir; there was nothing in it.

Q. How do you know that?

A. I could see it when it fell.

Q. Did it have its cover off?

A. Yes, sir; no cover on.

Q. One of its heads off?

A. Yes, sir; one of the heads was off. The hoops had been painted.

Q. You say it was a pickle keg?

A. It had been a pickel keg, but used at the present time for fresh water to drink in the room.

Q. It belonged to the vessel? A. Yes, sir.

Q. Do you know who put the keg there?

A. No, sir; I don't.

Q. Had it any water in it at the time?

A. No, sir.

Q. It was empty of everything?

A. Yes, sir.

Q. You say a whole gang of the stevedore's men were in the lower hold? A. Yes, sir.

Q. You don't mean to say that that whole gang was immediately under the hatch, do you?

A. No, sir; the whole of them were right underneath us.

Q. When you called down how many were underneath the hatch. How many did you see when the keg fell?

A. I think I saw about four or five there.

Q. What were you loading at that time?

A. I don't recollect what they were taking in. I think they were stowing away kerosene, or rosin barrels. One of that; either kerosene or rosin barrels.

Q. They were all let down the hold there through that forward hatch? A. Yes, sir.

Q. By a sling?

A. Yes, sir; and stowed away. They had been taking it in through the forward hatch, and were stowing the cargo away down below.

Q. As soon as you saw the keg fall down you hollered out?

A. Yes, sir; I hollered out as loud as I could.

Q. You say the libelant was in the lower hold?

A. Yes, sir.

Q. What is the depth of the lower hold where he was standing from the forward hatch on the main deck?

A. I should judge it was about fourteen feet from the top part of the deck where he was; fourteen or sixteen feet; something like that.

Q. How high is it between decks?

A. Between decks is nine feet high. I think it is. I have not measured it. That is generally the run between decks, eight or nine feet.

Mr. ANDROS.—Q. Did she have double between decks?

A. No, sir; not double between decks. She has got beams in the lower hold.

Q. She has beams for the lower between decks?

A. Yes, sir, but there was no deck laid. There are beams for three decks, but there are only two decks laid.

Mr. HOLMES.—Q. As soon as this keg started down the hatch you called down below to look out?

A. I did.

Q. You don't know whether he heard you or not?

A. No, sir; I couldn't say. I know a whole lot of them seemed to jump to one side except this man. He did not seem to move at all.

Q. What particular thing was he doing at that time?

A. He was moving some of the cargo because he was stooping down. I couldn't say if he had hold of a barrel or box, or what he had hold of. He was at work.

Q. I suppose you did not see where he was hurt on account of the blood?

A. No, sir, I couldn't see where he was hurt.

Q. Was that the reason, on account of the blood?

A. Yes, sir. I did not go close to see. His head was covered up, and I could see the blood.

Redirect Examination.

Mr. ANDROS.—Q. When he was brought up out of the lower hold his head was covered up?

A. Yes, sir; he had something round his head to stop the blood.

Q. When do you expect to go to sea again?

A. Next week, I think.

Q. Where are you bound?

A. We are bound to New York.

Q. Was there any cargo in the lower hold under the hatch at the time this man was injured?

A. Yes, sir.

Mr. HOLMES.—Q. How tall was this keg?

A. It stands about that high (illustrating).

Q. Give it in inches.

A. I should say about sixteen inches.

Mr. HOLMES.—I shall reserve the right to further cross-examine this witness before the vessel sails if I deem it necessary.

Mr. ANDROS.—I have no objection provided it is done before Friday night, because I am going away.

E. PETERSON.

Deposition of Henry Hannum.

Called for the claimant. Sworn.

Mr. ANDROS.—Q. What is your name, age, residence, and occupation?

A. My name is Henry Hannum, age, 19; residence, Philadelphia; occupation, mariner.

Q. How long have you been going to sea?

A. About eighteen months.

Q. Are you the third officer of any ship now?

A. Yes, sir; the "Joseph B. Thomas."

Q. Where did you first join the "Joseph B. Thomas" as third officer?

A. Philadelphia.

Q. When?

A. On the 26th of last March, a year ago.

Q. Had you been third officer of her before that time?

A. No, sir.

Q. Before that time had you been on board of her as a seaman?

A. No, sir. I joined her as third mate in Havre.

Q. Then when you joined her in Philadelphia a year ago last March did you join her as a seaman?

A. Yes, sir; an ordinary seaman, a boy.

Q. And then you came where?

A. To San Francisco.

Q. Then from San Francisco did you go to sea in her?

A. No, sir.

Q. Why not?

A. I went to Seattle to see a brother of mine. When I came back the ship had gone.

Q. Then what did you do?

A. I shipped in the "Berlin."

Q. Then where did you go to?

A. I went to Havre.

Q. When you arrived in Havre state whether the "Joseph B. Thomas" was there?

A. Yes, sir, she was there, and I joined her.

Q. You joined her there as third mate?

A. Yes, sir.

Q. From Havre you came where?

A. Philadelphia.

Q. And from Philadelphia here?

A. Yes, sir.

Q. That is her last voyage?

A. Yes, sir.

Q. While the ship was in Philadelphia do you know of one of the stevedore's men being injured in the lower hold of the vessel?

A. Yes, sir.

Q. At the time he was injured where were you. What part of the ship?

A. Standing under the topgallant forecastle.

Q. How near to the forward hatch?

A. I was about three feet away. When he was hit I was looking right over the hatch.

Q. Where was the second mate at that time?

A. Under the topgallant forecastle, near the fore hatch.

Q. How near to the hatch. Close by or away from it?

A. Pretty close.

Q. Where was this man that was hurt at work?

A. He was about even with the beams in the lower between deck.

Q. Working in the lower hold?

A. Yes, sir.

Q. How high in the lower between deck had the cargo been stowed. Under the square of the fore hatch?

A. I think about five feet under the lower between deck; five or six feet.

Q. What hit him, if you know?

A. It was a keg.

Q. What sort of a keg was it?

A. It was a pickle keg. I think it was one of these small pickle kegs.

Q. State whether that keg fell down through the hatch into the lower hold?

A. Yes, sir.

Q. Where was the keg before it fell?

A. It was setting on the fore hatch under the fore-castle head.

Q. How happened it to fall down in the lower hold, if you know?

A. One of the men trod on the hatch, and the hatch tilted and the keg rolled off, and fell down.

Q. What man was it. One of the crew of the ship or one of the stevedore's men?

A. One of the stevedore's men.

Q. Do you know who took off the forehatch covering on that morning under the topgallant forecastle?

A. The stevedores.

Q. Where were these hatch covers piled?

A. Piled in the forepart of the hatch.

Q. Forward of the coamings?

A. Yes, sir.

Q. Forward of the forward coamings?

A. Yes, sir.

Q. When the keg tilted and fell over the coamings of the hatch did the second mate say anything?

A. Yes, sir.

Q. What did he say?

A. He sang out, "stand from under."

Q. Did you see the keg when it started?

A. Yes, sir, I see it, but I was too far away to get to it before it fell over the hatch.

Q. Had it hit the man before you looked down the hatch?

A. Yes, sir; just as I got there to the hatch I saw the keg fall.

Q. Who was under the topgallant forecastle besides you and the second mate and this man who trod on the hatch. Any of the boys or the ship's company?

A. Yes, sir; I think one of the boys was under there.

Q. How many belonging to the ship were on board of her at this time. Yourself, and second mate, and who else?

A. Two boys.

Q. Was her crew then shipped at this time?

A. No, sir. They had all left.

Q. The only person that belonged to the ship was your self, the second mate, and these two boys at that time?

A. There was a steward and carpenter, and the port captain.

Q. Where was the master of her at that time?

A. He was at home.

Q. Do you mean in Philadelphia?

A. No, sir, at Thomaston, Maine.

Q. Where was the first officer?

A. He was home down at Thomaston.

Q. Do you know what this stevedore's man that trod on the hatch was doing, where he came from, or where he was going?

A. I think he came out of the water closet.

Q. He was crossing over the deck from one side to the other. Do you know which side he came from, and which way he was going?

A. He came from the starboard side.

Q. Which side of the ship lay to the dock?

A. The port side.

Q. When do you expect to go to sea again?

A. I think the ship will go in the fore part of next week.

Q. That is the "Joseph B. Thomas"? A. Yes, sir.

Q. You are still attached to her as third officer?

A. Yes, sir, I am going to sign to-day.

Cross-Examination.

MR. HOLMES.—Q. You are going then to New York from here in the “Joseph B. Thomas”? A. Yes, sir.

Q. And so is Mr. Peterson, the second officer?

A. I believe so.

Q. What had you been doing under the top-gallant fore-castle prior to that accident?

A. I don't know. I don't remember.

Q. How long had you been there prior to the accident?

A. I had been under there an hour, I believe.

Q. You don't remember what you had been doing?

A. No, sir.

Q. Whatever you had been doing had you finished it at that time?

A. Yes, sir, just about finished.

Q. Where were you when the keg tumbled into the hatch?

A. Standing about three feet away from the hatch.

Q. Whereabouts?

A. On the port side of the hatch. I was standing about here underneath. (Pointing to claimant's Exhibits “A”.)

Q. You had completed your work. A. Yes, sir.

Q. What were you then going to do?

A. I was going aft, not going to do anything particular. The second mate had not told me yet.

Q. Had you been helping the second mate in something whatever it was? A. Yes, sir.

Q. So that work was just finished and you came to this position that you speak of, three or four feet on the port side from the forward part of the hatch, as this keg fell through the hatch? A. Yes, sir.

Q. You say the stevedore's man took off these hatch covers that morning? A. Yes, sir.

Q. You don't mean to say you saw them take them off?

A. No, sir. But none of the ship's company took them off.

Q. That you don't know, either?

A. Yes, sir, I know that.

Q. Did you see them taken off?

A. No, sir, I know the ship's company did not take them off, because I would have to help them.

Q. They couldn't be taken off without your assistance then by the ship's company? A. No, sir.

Q. Why not?

A. I have always helped them. The stevedores take hatch covers off every morning when they come and start to work.

Q. I am speaking of that particular morning. How many men does it require to lift those hatch covers off?

A. Two.

Q. There are bolts at each end? A. Yes, sir.

Q. And one man at one end and another at the other can lift them off? A. Yes, sir.

Q. As a matter of fact, you don't know who did take them off that morning?

A. No, sir; I did not see any one take them off.

Q. What makes you think this stevedore's man came from the water closet?

A. That is the only thing he could be doing under there that I know of.

Q. He had no business under there in loading the vessel? A. No, sir.

Q. The man who directs the sling stands on the topgallant forecastle? A. Yes, sir.

Q. There was no necessity of any one being on the main deck under the topgallant forecastle at the forward hatch to assist in loading the vessel through the hatch?

A. No, sir.

Q. And this man who you say trod on the hatch cover was not there in any business connected with the loading of the vessel at that time. A. No, sir.

Q. Are you sure you had no men on board at that time besides those you have named and the officers?

A. That is all.

Q. No men before the mast? A. No, sir.

Q. Do you know the name of the stevedore's man who you say trod on the hatch cover?

A. No, sir. There is only one that I know the name of, that is the foreman, Paddy.

MR. HOLMES.—I make the same reservation in regard to this witness as with the second officer.

Redirect Examination.

MR. ANDROS.—Q. Are those boys that were under the top-gallant fore-castle at the time this accident happened on board the ship yet? A. No, sir.

Q. When did they leave. How long ago?

A. The day after we were paid off. The 23rd or 24th of last month.

Q. September? A. Yes, sir.

Q. Are any of the fore-mast hands aboard the ship yet? A. No, sir.

Q. Besides yourself, the second officer and the carpenter who else is on board?

A. Aboard the ship now is the steward, the cook, the captain, first, second and third mate, and the carpenter, and the painter.

Q. The painter made the voyage in her?

A. He just came out this passage. The voyage is not over until we get back.

Q. The painter made the voyage from Philadelphia?

A. Yes, sir.

MR. HOLMES.—Q. These two boys that you have spoken of are still in the city, so far as you know?

A. No, sir, I don't know anything about them.

Q. So far as you know they are?

A. So far as I know.

MR. ANDROS.—That is you don't know where they are?

A. No, sir, I don't know. No one told me anything about them, and I have not seen them.

MR. HOLMES.—You don't know that they have left the city?

A. No, sir, I don't know anything about them since they left.

HENRY HANNUM.

Witness my hand this 17th day of October, 1892.

J. S. MANLEY,
Commissioner U. S. Circuit Court, Northern District of California.

[Endorsed]: Filed October 17th, 1892. Southard Hoffman, Clerk. By J. S. Manley, Deputy Clerk.

In the United States District Court of the Northern District of the State of California.

IN ADMIRALTY.

JENS P. JENSEN,

Libellant,

vs.

THE SHIP. "J. B. THOMAS,"

SAMUEL WATTS et al.,

Claimants.

Deposition of William J. Lermond, Henry B. Hannum and Ole Larsen, taken on behalf of the claimants in the above entitled cause, before George T. Knox, Esq., Notary Public, at the office of Messrs. Andros & Frank, 320 Sansome Street, Rooms 6 & 7, San Francisco, November, 9th. 1893.

Counsel Appearing: Walter C. Holmes, Esq., Proctors for Libelant. Messrs. Andros & Frank, Proctors for Claimants.

Deposition of Henry B. Hannum.

Direct Examination.

MR. ANDROS.—Q. What is your name?

A. Henry B. Hannum.

Q. In October, 1892, you were examined as a witness on behalf of the claimants in this case; since that time have you been to sea? A. Yes, sir.

Q. When did you last sail from this port?

A. About the middle of October, 1892.

Q. When did you return back to this port?

A. The 17th of September of this year.

Q. Are you still connected with the ship "J. B. Thomas" as one of the company of that ship? A. Yes, sir.

Q. In what capacity?

A. Third mate.

Q. When you testified in this case in October, 1892, you stated that at the time that Jensen was injured you and the second mate, and one of the ship's boys, and one of the stevedore's men, were under the topgallant fore-castle; now, at that time were there any other persons under that topgallant fore-castle except those that you mentioned at that time? A. No, sir.

Q. Just at and immediately before the time that the

cask fell into the hold, by which Jensen was injured, had the second mate come up from the between decks?

A. No, sir.

Q. If just at the time that the cask fell into the hold, by which Jensen was injured, the second mate came up from the between decks through the fore hatch, could you have seen him? A. Yes, sir.

Q. If any stranger from the shore had come in on the main deck under the topgallant forecastle, and had asked the second mate to give him a piece of rope, in your opinion, would you have heard him? A. Yes, sir.

Q. Did any person from the shore come on board the ship just before the accident happened, under the topgallant forecastle, and request the second mate, or any other person there, to give him a piece of rope?

A. No, I didn't see anybody, and there was nobody there.

Q. Did any person belonging to the ship, as one of the company of the ship, tread on the hatch covers, by reason of which the cask by which Jensen was injured was precipitated into the hold? A. No, sir.

Q. What means are there of getting from the between deck on to the main deck under the topgallant forecastle?

Q. There are no means when the hatches are off. When the hatches in the lower between decks are off there are no means of getting up.

Q. I am not speaking of lower between decks, but of first between decks; now, suppose you had at the time this accident happened, been in the between decks and

wanted to come upon deck, how would you come up, through what hatch?

A. Through the main hatch.

Q. What were the means of getting on the main deck from the between decks through the main hatch?

A. You come up a ladder.

Q. At the fore hatch under the topgallant forecastle, what means were there of getting from the between decks on to the main deck?

A. There are steps there when the hatches are on between decks.

Q. What means are there of getting from the between decks on to the main deck through the forward hatch when that hatch is open?

A. There are two hatches, and a hatch on the main deck. There is no way of getting up unless the hatch in the between decks is on.

Q. When the forward hatches in the between decks are on, what means is there of getting from the between decks on to the main deck through the forward hatch on to the topgallant forecastle?

A. There is steps put there.

Q. At the time that this accident happened were the between decks forward hatches open or closed?

A. Open.

Q. And being open, what means were there of getting from the between decks on to the main deck through the forward hatch on to the topgallant forecastle?

A. There is no way of getting there.

Q. Do you know about what the distance is from the upper between deck to the main deck?

A. About nine feet.

Q. Then if they were working the forward hatch down into the lower between decks, and a person in the between decks wanted to come on the main deck, he would have to come up through the main hatch? A. Yes.

Q. Do you remember the names of these two boys who were on board the ship at the time this accident happened? I mean the two ship's boys?

A. I remember one of them.

Q. What was his name?

A. Victor Russ.

Q. How long, or about how long, after the ship arrived here in 1892, was it before these two boys left the ship, if they did leave it?

A. I believe it was about a week.

Q. Do you know what became of them, if they went to sea or not, of your own knowledge? A. No, sir.

Q. A witness by the name of John F. Fitzgerald has testified in this case as follows: That at the time of the accident "the mate was between decks, and he started to come up to get on the main deck. Mr. O'Donnell was helping him up--the stevedore—to get on the main deck. A young fellow on the ship started to run around to help the mate to get him up on the main deck, and he trod on that hatch." Is that true? A. No, sir.

Q. He also testifies the man who trod on the hatch was a man belonging to the ship; is that true?

A. No, sir.

Q. At this time was there any mate on board the ship except the second mate, and yourself as third mate?

A. No, sir.

Q. The first mate was not aboard? A. No, sir.

Cross-Examination.

Mr. HOLMES.—Q. If the witness Fitzgerald in his testimony just quoted to you had said second mate instead of mate, then that testimony would be true, would it not. A. No, sir.

Q. Were you working in loading the “J. B. Thomas” through the main hatch at the time mentioned?

A. No, sir, not through the main hatch.

Q. Don't you sometimes load through both hatches at the same time?

MR. ANDROS.—Objected to as immaterial as to what they sometimes do.

A. Yes, sir.

Q. How is that you can now recall that you were not on the day mentioned loading through the main hatch, as well as through the forward hatch?

A. We had only one gang of stevedores.

Q. How many stevedores are there in a gang?

A. I don't know.

Q. Then how do you know there was only one gang of stevedores? A. They were only working one hatch.

Q. You say that you were not working through the main hatch because you were working only one gang of

stevedores, and you also say you do not know how many stevedores there are in a gang; then how can you say that you were not that day also loading through the main hatch?

A. At the time the man was hurt they were working in the fore hatch.

Q. I will ask you again, then, how you can recall that fact a year and a half after this accident occurred?

A. I was there aboard the ship and saw them using only the one hatch.

Q. Can you or will you say that there had been no loading through the main hatch that day prior to Jensen's injury?

A. No, sir, I can't say.

Q. Suppose the main hatch between decks was open. how would a person in the between decks get to the main deck?

A. Come up a ladder.

Q. Through the main hatch on the main deck?

A. Yes, sir.

Q. Could the main deck be reached from the between deck through the main hatch on the main deck by that ladder just as well with the main hatch on the between decks open as covered?

A. No, sir.

Q. When you say that it is nine feet between the main deck and the between decks, that is your estimate, I suppose, not based on actual measurement?

A. No, sir, just my estimate; I didn't measure it.

Q. It would be quite difficult, would it not, for one to come from the between decks on to the main deck through the main hatch on the main deck, if the main hatch on the between decks were uncovered?

A. No, sir.

Q. You have stated it would be less easy to do so if the main hatch on the between decks were open than if covered? State why?

A. When the hatch on the between decks is on the ladder is hauled up.

Q. Hauled up where? A. On deck.

Q. On to the main deck? A. Yes, sir.

Q. Where is the ladder when the hatch on the between decks is open?

A. Down below; it goes down to the stanchion.

Q. According to your last few answers, if I understand them, it would be easier to go to the main deck through the main hatch on the main deck, if the main hatch on the between decks were open, is that so?

A. It would be just the same; you have to climb up a ladder anyway.

Q. Then why did you say a short time ago that it would be easier if the main hatch on the between decks was covered?

A. I said if the hatches were off.

Q. I asked you a moment ago the following question: "Could the main deck be reached from the between decks through the main hatch on the main deck by that ladder just as well with the main hatch on the between decks

open as covered?" To which you answered, "No, sir?"
Was that answer correct? A. Yes, sir.

Q. Now you say the contrary, do you not?

A. No, I don't say that.

Q. What had you been doing immediately prior to Jensen's injury?

A. Working under the fore-castle head.

Q. At what work?

MR. ANDROS.—Objected to as the witness has heretofore been examined on the whole subject as to what he was doing, and it is not in rebuttal to anything drawn out on the present examination.

(Proctor for libelant states that the object of the question is to test the memory of the witness.)

A. I could not say for sure. I believe we were cleaning out the locker.

Q. In your examination in October, 1892, as a witness in this case, you stated that you didn't remember what you were doing at that time; is your memory better now than it was then?

MR. ANDROS.—Objected to as the witness has not stated now that he knew what he was doing.

A. I said the same thing now as I said then; I don't remember exactly what I was doing.

Q. Do you now remember or state that in your former examination you said that you believed at that time you were cleaning the lockers out?

A. Yes, sir, I believe I did.

Q. What was Mr. Peterson, the second mate, doing just prior to Jensen's accident?

Mr. ANDROS.—Objected to upon the ground that the witness has already been, on the prior examination, fully cross-examined on the subject-matter of what Mr. Peterson was doing, and the question has a tendency to contradict him in respect to his present testimony.

(Proctor for libelant states that the object of the question is to test the memory of the witness.)

Mr. ANDROS.—The objection is that the memory of the witness is to be tested as to the matter on which he is now being examined, and not as to extraneous matters wholly disconnected with the subject-matter of the present examination.

A. He was helping us.

Q. At this work of cleaning out the lockers?

Mr. ANDROS.—Objected to as it assumes the work; the witness said he thought they were.

A. He was helping us at whatever we were doing.

Q. Do you know a Mr. Fitzgerald of Philadelphia?

A. No, sir.

Q. Do you know a man employed along the wharf by the Pennsylvania Railroad Company as a yardman, one of whose duties it was to set the cars ready for the stevedores and to move cars up and down from the ship?

Mr. ANDROS.—Objected to on the ground that no name is mentioned, and it does not appear that the witness Fitzgerald or any one has testified in this case, or that the attention of the witness is called to the testimony of Fitzgerald or any other witness who has testified in this case.

A. No, sir, I do not.

Q. Do you know a clerk of the Pennsylvania Railroad Company stationed at Reed Street, named Gray?

A. No, sir.

Redirect-Examination.

Mr. ANDROS.—Q. Referring to the ladder by which you came from the between decks through the main hatch on to the main deck, where does the foot of that ladder rest when the ship is anchored, on the keelson?

A. Yes, sir.

Q. Then if all the hatches were open is there any difficulty in going up from the lower hold or the between decks to the main deck on that ladder?

A. No, sir.

Q. I understood you to say that when the between decks hatches were closed the ladder was hauled up on deck?

A. Yes.

Q. When the between decks hatches are closed, and you want to go from the between decks on to the main deck, how do you get up if this ladder is hauled up on deck; that is, on the main deck?

A. They have a shorter ladder they put up.

Q. If the ladder goes up through the between decks hatch to the main deck, the between decks hatch must be open, must it not, when the ladder is in place?

A. Yes, it must be open.

Q. What is the difficulty of going to the main deck on that ladder; is there any?

A. There is no difficulty.

Q. You have stated in your cross-examination that there was more difficulty in going on the main deck on this ladder when between decks hatches were open than when they were closed; did you understand that question, and if you did, what was the reason of its not being as easy when the hatches were open as when they were closed?

A. You have a longer distance to climb coming up out of the lower hold, then you do from the between decks. You have to haul the long ladder up, and put a short one down.

Recross-Examination.

Mr. HOLMES.—Q. Where does this first ladder you have spoken of, the long ladder, rest if the hold is full or partly full? I mean where does the foot of the ladder rest then?

A. It rests on the cargo.

Q. Can you say whether, at the time of the accident to Jensen, the main hatch on the between decks was open or closed?

A. I can't say.

Q. Can you say if at that time the main hatch on the between decks were closed that the short ladder you have spoken of was there in place?

A. No, sir, I can't say.

Q. Can you say if at that time the main hatch on the between decks were uncovered the long ladder you have spoken of was there in place?

A. No, I can't say.

Redirect Examination.

Mr. ANDROS.—Q. When the stevedores went below to work cargo through what hatch did they go, through the main hatch or forward hatch? Or the after hatch?

A. Through the main hatch.

Q. When they got through work or when ever they wanted to come on to the main deck, through what hatch did they come on to the main deck, whether the main hatch or the forward hatch?

A. Through the main hatch.

Q. At the time this accident happened were they loading cargo through the forward hatch?

A. Yes, sir.

Deposition of Ole Larsen.

Direct Examination.

Mr. ANDROS.—Q. What is your name?

A. Ole Larsen.

Q. Were you the carpenter of the ship "J. B. Thomas" on her voyage from Philadelphia to San Francisco in 1892?

A. Yes, sir.

Q. Were you on board the ship at the time one Jensen was injured by a keg falling on to him?

A. Yes, sir.

Q. Did you see the accident?

A. No, sir.

Q. Where were you at that time, on board the ship?

A. I think I was standing in the shop working.

Q. You didn't see the accident?

A. No, sir; I was at work in my shop.

Cross Examination.

Mr. HOLMES.—Q. Are you still on board the ship “J. B. Thomas” as carpenter? A. Yes, sir.

Q. And you were on board of her a year or so ago when she was in San Francisco?

A. Yes, sir.

Deposition of William James Lermond

Direct Examination.

Mr. ANDROS. —Q. What is your full name?

A. William James Lermond.

Q. You are the master of the ship “J. B. Thomas”?

A. Yes, sir.

Q. Were you master of her in 1892?

A. Yes, sir.

Q. Were you master of her on her voyage from Philadelphia to San Francisco beginning in 1892?

A. Yes, sir.

Q. What month? A. April.

Q. Were you on board of her when a man by the name of Jensen, a stevedore, was injured on board of her?

A. No, sir.

Q. Did you have two boys on board of her who came to San Francisco? A. Yes, sir.

Q. How long after you arrived in San Francisco was it that those boys left the ship, if they did leave her?

A. Three or four days, I think.

Q. Did they ever return to the ship and rejoin her?

A. No, sir.

Q. At the time Jensen was injured were you on board the ship or away.

A. I was away.

Q. Where?

A. At home, Thomaston, Maine.

Q. Do you know the names of those two boys?

A. On the articles they were Ete Watten and Victor Russ.

Q. Do you know whether Ete Watten ever went by the name of Hans Watten?

A. Yes, he did on board the ship. That was the name he went by altogether on the ship.

Cross Examination.

Mr. HOLMES.—Q. Did these two boys leave when they were paid off?

A. No, sir, a day or two after. They were paid off on the 22nd, I think, of September, and they stopped two or three days after that on board the ship.

Q. And they were paid off how many days after the ship arrived?

A. The third day, I think; I am not certain.

Q. Were they paid off at the same time the rest of your crew were paid off?

A. Yes, sir.

Q. At the shipping commissioner's office?

A. Yes, sir.

Q. Did you occasionally see those two boys, or either of them, after they left the ship?

A. I think I saw one of them along the side of the ship once; I am not sure; I think I saw him alongside of the ship once, this Hans.

Q. Any more than once?

A. No, sir, I think not.

Q. Did you ever see the other one?

A. No, sir, never.

Redirect Examination.

Mr. ANDROS.—Q. How long after they left the ship was it that you saw this boy of whom you have spoken, that you think you saw?

A. I don't remember; I think it was a day or so.

Q. Almost immediately after he left the ship?

A. Yes, sir.

Q. What date did you arrive?

A. I arrived here on the 19th of September, 1892.

It is hereby stipulated that the foregoing depositions, taken in shorthand, and written out may be read by either party on the trial of the cause in which they are entitled, subject to all objections as to materiality and pertinency of the questions and answers; but notice of the time, place and manner of taking said depositions, and as to the form of the interrogatories, and the reading over of said depositions to the witnesses when written out, and their signature thereto, and all other matters of sub-

stance, are hereby waived. And it is stipulated that said witnesses are about to depart on a voyage to sea.

WALTER G. HOLMES,

Proctor for Libelant.

ANDROS & FRANK,

Proctors for Claimants.

[Style of Court—Title and Number of Cause.]

Opinion.

Libel in rem to recover \$10,000 as damages for personal injuries alleged to have been sustained in consequence of the negligence of the master of the vessel and of those entrusted by the owners of said vessel with its care and management. Decree for libelant in the sum of \$6000.

Frank P. Prichard, Esq., and Walter G. Holmes, Esq.,
Proctors for Libelant.

Messrs. Andros & Frank, Proctors for Claimants.

MORROW, District Judge.—This is a libel in rem against the ship “Joseph B. Thomas” to recover sum of \$10,000 as damages for personal injuries alleged to have been sustained in consequence of the negligence of the master of the vessel and of those entrusted by the owners of said vessel with its care and management. The libelant was one of a gang of stevedores engaged in loading the ship “Joseph B. Thomas,” at the port of Philadelphia, and was injured on the afternoon of April 11th, 1892, while at work in the lower-hold of the vessel under the

forward-hatch. The gang of stevedores, including the foreman, consisted of 14 men. They had been engaged in loading case oil. At the time of the accident, most of the men, including the libelant, were at work in the lower hold under or near the forward-hatch, engaged, for the most part, in tearing up a stage which had been put in the hold in order to render the work of loading more easy. The testimony indicates that nine of the gang of fourteen men were located in the place just referred to; that the foreman and two other men were in the between decks at the forward-hatch; that the burden-tender was at the main hatch some fifty feet away; and that the engineer was on the wharf. The hatch covers, consisting of three pieces, had been taken off that morning presumably by the stevedore gang, although it does not appear which of the men performed that service. They were piled one on top of the other forward of the forward hatch on the main deck, and, so far as the evidence discloses, were piled in the usual and proper manner. It is true that the second mate, who testified on behalf of the claimants, stated that he noticed that day that the hatch-covers were improperly piled up, but I am unable to accept this testimony uncorroborated by any other witness, as I seriously doubt the credibility of the testimony of the second mate in other material respects. These hatch-covers were somewhat curved. The hatch combings were about 9 or 10 inches high, and the covers, piled one on top of the other, were nearly flush with the hatch combings. A keg, belonging to the ship, which had been freshly painted, was

placed by someone on these hatch-covers, to dry. This keg was knocked over into the hatchway and, in its fall, struck the libelant on the head, inflicting some very severe injuries. Before referring to the testimony on both sides, as to the manner and the cause of libelant's injuries, it is proper to say that no question of contributory negligence is raised in the case. The libelant was in the lower-hold, under the forward hatch, where he had a right to be, and was then in the discharge of his duties as one of the gang of stevedores.

The libelant contends that he was injured by reason of the negligence of those then in charge of the vessel in placing the keg on the hatch-cover at such close proximity to the hatchway, into which, if accidentally jarred or moved, it was liable to roll or fall, to the danger of those of stevedore's gang who were working below under the hatchway. It is further claimed, in this connection, that the keg was knocked over by someone connected with the vessel, while hastening to assist the second mate to climb up out of the forward hatch from between-decks to the main deck. On the other hand, the claimants contend that the person who knocked the keg over was one of the stevedore's gang and a fellow-servant of the libelant, and that, therefore, the vessel is not responsible, in law, for any injuries sustained to the libelant thereby. The testimony is irreconcilably conflicting. In this connection, the evidence of two witnesses, not connected with the ship, nor with stevedore's gang who happened casually to be on board the vessel at the time the libelant was in-

jured, is of great importance in enabling the Court to arrive, substantially, at the real state of facts. These two witnesses, so far as the evidence discloses, appear to be disinterested. It may be observed at the outset, that the testimony of the libelant himself is of little value in determining how and through whose fault the injury arose. All that he knows about the accident is that he was at work in the lower hold under the fore-hatchway, when a keg fell and struck him on the head, rendering him unconscious. The testimony of the two witnesses just referred to is as follows: John F. Fitzgerald testified that was employed along the wharf by the Pennsylvania Railroad Company; that, on the 11th of April, 1892, he went on board the ship "Joseph B. Thomas"; that he went on board with a young man who desired to obtain a piece of rope, that, at the time of the accident, he was standing right over the hatch; that "the mate was between-decks, and he started to come up to get on the main deck. Mr. O'Donnell was helping him up—the stevedore—to get up on the main deck. A young fellow on the ship started to run around to help the mate to get him up on the main deck, and he tread on that hatch, and that hatch upset the barrel, and the barrel fell down in the hold. It wasn't a barrel, it was a keg"; that the keg was standing "right on the corner of the hatch. The hatches were taken off, and then put one on top of the other, and the keg set over and when you tread on that corner of the hatch that turned the keg over and it rolled down the hatch before anybody could get hold of it." He stated that the person

who trod on the hatch was a "young man belonging to the ship." On cross-examination, he re-affirmed several times the answer that it was a young man, belonging to the ship, who stepped on the hatch-covers, and that he had seen him several times before that on deck, having had previously occasion to go on board the vessel. He frankly admitted, however, that he did not know the young man's name and he did not know in what capacity he was employed on board the vessel. He did not know "whether he lived there or not. Sometimes they live ashore. Sometimes they sleep aboard and eat ashore." Wm. B. Gray, the person who accompanied the witness Fitzgerald on board the vessel and was present when the accident occurred, testified: "I went aboard for a piece of rope. I asked Mr. O'Donnell, the boss of the stevedores, and he hadn't any, and called to the mate. The mate said he would get me a piece. The mate was about climbing up the forward stanchion of the ship to the main deck. The hatching was laying there; that is, the covering of the hatch was lying forward of the hatch, and the cask sitting on the covering of the hatch; and as the mate came up to get hold of the combings Mr. O'Donnell gave him a lift, and one of the men helping him there, I supposed him to be a sailor, tread on the end of the hatch and threw the cask up in the air, and it went down in the hold. Mr. O'Donnell was helping the mate." On cross-examination, he states that he was standing aft of the forward hatch; that he cannot swear with any certainty who it was that stepped on the hatch covering; that he would

not swear that the person who did step on the covering was a sailor connected with the ship. On re-direct examination, he states that he could not tell whether the man who upset the cask was a full-grown man, as, from where he was standing, he could not see him at all. This version of the accident, given by these two witnesses, is corroborated by the testimony of the foreman of the stevedore's gang and at least two of the stevedores themselves. O'Donnell, the foreman, thus describes the accident: "After I got the stage up, I used short wood to chock it, and the 2nd mate of the ship jumped down to see how much short wood I was using. He came down to see whether I was using too much. He stood a minute and said it was all right. He started to climb up the forward stanchion of the forward hatch. He got up as far as the combings, when he put his hand over and sung out to a boy, to the best of my knowledge, to give him a hand to pull him over, and that's all I could see of it, I gave him my hand, put it under his foot to help him over, and I heard somebody halloo 'under,' and when I looked down the hatch I saw this man laying on the floor of the ship—that is, Jensen." On cross-examination, he reaffirmed the statement that the mate (meaning the 2nd mate) was in the between-decks. He was unable, however, to say who it was that went forward to help the mate up, as he was in the between-decks. Martin Ryan, one of the stevedores, testified that he was in the lower hold, tearing up the oil stage, and he relates what he saw of the accident, as follows: "All I saw, I saw the second mate climbing

up from between-decks on the upper deck, under the gallant forecastle. The next I heard was, 'Look out below.' I jumped into the wing of the vessel to get out of the way, and I looked around and I saw the keg laying there and Jensen laying down." Chris Nelson, another of the stevedores, stated that he was in the between-decks, helping O'Donnell, the foreman. In answer to the question: "State all that you know of the accident," he replied: "There was no ladder in the hatch. The second mate came down the stanchion, sliding down on the stanchion, and he went up the same way, and as he went up this keg came down. He halloed to one of the boys or young men belonging to the ship to help him out of the hatch, and Mr. O'Donnell, the foreman, helped him up, and the keg came down, and that's all I know." He admits on cross-examination, that he didn't see who it was that came to the assistance of the second mate. In reply to the question, put to him on cross-examination: "Did you see that keg before?" he replied: "Yes, sir, I saw it that forenoon. A young man was sitting painting it, and set it there to dry on the hatches. Q. Which end was it on? A. On the forward part of the hatch covering, on the port side." This constitutes the testimony, on the part of the libelant, indicating how the accident happened. As against this evidence, the second and third mates testified, substantially, as follows: Edward Peterson stated that he was the second officer of the vessel at the time; that when the libelant was injured, he (the 2nd mate) "was up alongside the hatch coming on the main deck;"

that the third mate was a little away from him. He thus describes the accident: "There was a little keg standing on one corner of the hatch cover, on the port corner of the hatch cover, and one of the men happened to touch the top hatch cover on the starboard side and through that it started the keg off the hatch cover, and the keg went down through the hatch, and struck the man." . . . Q. "Who was the man that trod on this hatch cover?"

"A. One of the stevedore's men. Which one it was I cannot say.

"Q. It was one of the stevedore's men, but you do not know his name?"

A. No, sir; I did not take particular notice which one it was.

Q. Were any others of the stevedore's men under neath the top gallant fore-castle except this one that trod on the hatch?"

"A. I don't think there was.

"Q. What was this stevedore's man doing when he trod upon the hatch cover?"

"A. I don't know exactly what he was doing. He just happened to come along and touch the hatch cover. Either he was going down the hatch, or what he was going to do I don't know. I know he just happened to touch the hatch cover the least mite."

On cross-examination, he testified as follows:

"Q. What were you doing at the forward hatch at that time?"

“A. I was not doing anything. I was doing something under the topforecastle, and stopped to look down in the hatch to see what they were doing. We were taking in cargo and I looked down occasionally while they were taking in cargo.

“Q. What were you doing under the forecastle head?

“A. I don’t exactly recollect what I was doing. I had underneath there two boys, and the third mate, finishing something I was doing. I cannot recollect now what I was doing. There is always something.”

Henry Hannum testified that he was the third mate of the vessel; that at the time the libelant was injured, he was standing under the topgallant forecastle, about three feet away from the forward hatch, and that he was looking right over the hatch; that one of them trod on the hatch, and the hatch tilted and the keg rolled off and fell down; that one of the stevedore’s men trod on the hatch; that he thinks one of the boys (connected with the ship) was also under the top-gallant forecastle besides the second mate and himself; that he thinks that the man who trod on the hatch came out of the water closet; that he does not know the name of this man. This witness was subsequently recalled and deposed as follows: “Q. Just at and immediately before the time that the cask fell into the hold, by which Jensen was injured, had the second mate come up from the between decks? A. No, sir.

“Q. If just at the time that the cask fell into the hold, by which Jensen was injured, the second mate came up from the between decks through the fore hatch, could you have seen him? A. Yes, sir.

“Q. If any stranger from the shore had come in on the main deck under the top-gallant fore-castle, and had asked the second mate to give him a piece of rope, in your opinion, would you have heard him? A. Yes, sir.

“Q. Did any person from the shore come on board the ship just before the accident happened, under the top-gallant fore-castle, and request the second mate, or any other person there, to give him a piece of rope?

A. No, I didn't see anybody, and there was nobody there.

“Q. Did any person belonging to the ship, as one of the company of the ship, tread on the hatch covers, by reason of which the cask by which Jensen was injured was precipitated into the hold?

A. No, sir.” . . . “Q. A witness by the name of John F. Fitzgerald has testified in this case as follows: ‘That at the time of the accident the mate was between decks, and he started to come up to get on the main deck. Mr. O'Donnell was helping him up—the stevedore—to get on the main deck. A young fellow on the ship started to run around to help the mate to get him up on the main deck, and he trod on that hatch.’ Is that true? A. No, sir.”

It is clear, from the testimony of this last witness and that of the second mate, that either the testimony of the witness Fitzgerald and of the person who accompanied him on board the vessel, as well as the corroboratory testimony of the foreman O'Donnell and of the two stevedores, is false, or else the testimony of the second and

third mates is absolutely untrue. After a careful consideration of the evidence in the whole case, I prefer to accept the testimony of the witness Fitzgerald, corroborated as it is by that of Gray, O'Donnell, Ryan and Nelson, as presenting the real state of facts. I reach this conclusion not for the reason alone that the number of witnesses on the part of the libelant is greater than that for the claimants, but, largely from the inherent probabilities and improbabilities of the two stories. In the first place, everyone connected with the stevedore's gang on that day was called by the libelant and not one of them stated that he was the person who trod on the hatch-cover. On the contrary, each one of them related where he was working at the time of the accident, and not one of them was on the main deck except the burden-tender (Jno. F. Davidson) and he testified that he was at the main hatch, not the fore-hatch, some 50 feet away, thereby precluding any inference that it might have been one of the stevedores who stepped on the hatch covers. On the other hand, it is a significant fact that the two young men or boys so-called, who, it was testified to by the second and third mates, were on board at the time and were connected with the vessel, were not called by the claimants; nor does it appear that any particular effort has been made to obtain their deposition although they remained with the vessel until she reached San Francisco, where the depositions of the second and third mates were taken. The captain himself admits that they remained by the ship some 3 or 4 days; that they were paid off the

third day after the ship arrived. Their testimony would have been most important, in dissipating any doubt as to who it was that stepped on the hatch cover; particularly in view of the fact that the testimony of the witnesses called for libellant, while it fails to identify specifically who it was that trod on the hatch cover, indicates that the person who did so was a young man. The very strong inference which naturally arises from this testimony, in view of the testimony produced on behalf of the claimants themselves that two young men were attached to the vessel and were then on board and, at the time of the accident, were quite close to the fore-hatch, is that this person must have been one of the two young men referred to. The failure of the claimants to call these two young men, and the explanation sought to account for this failure, are unsatisfactory and do not dispel the presumption raised against the claimants that the testimony of these witnesses, if produced, would have been unfavorable. This is a well-settled rule of evidence, not only in civil, but also in criminal, cases, as was said by Lord Mansfield in *Blatch v. Archer*, Cowp. 63, 65: "It is certainly a maxim that all evidence is to be weighed according to the proof which it was in the power of one side to have produced, and in the power of the other side to have contradicted." Mr. Starkie, in his work on Evidence, vol. 1, 54, this lays down the rule: "The conduct of the party in omitting to produce that evidence in elucidation of the subject-matter in dispute which is within his power, and which rests peculiarly within his own knowledge, fre-

quently affords occasion for presumptions against him, since it raises strong suspicion that such evidence, if adduced, would operate to his prejudice." See, also, *Com. v. Webster*, 5 Cush. 295, 316; *People v. McWhorter*, 4 Barb. 438; *Gulf C. & S. F. Ry. Co. v. Ellis*, 54 Fed. R. 181, 10 U. S. App. 640. In the last case, it was held that the failure to produce an engineer as a witness to rebut the inferences raised by the circumstantial evidence would justify the jury in assuming that his evidence, instead of rebutting such inferences, would support them. The failure of the claimants to obtain the testimony of these two young men confirms my conviction that the person who ran to the assistance of the second mate and stepped upon the hatch cover was one of the young men or "boys," so-called, who belonged to the vessel and were on board at the time. It seems but natural that when the mate called for help, one of the young men who was under the topgallant forecastle, not very far away from the fore-hatch, should respond with such alacrity to his superior's call. I conclude, therefore, that it was one of these young men, and not one of the stevedores, who stepped on the hatch covers, upsetting the keg, and that in no view of the case can the act of tipping the hatch cover and causing the keg to roll into the hatchway be construed as the act of a fellow-servant. But it is immaterial, in my opinion, whether the person who stepped on the hatch cover was one of the young men connected with the vessel or whether it was one of the stevedores, if the act of placing the keg on the hatch cover to dry was a failure to observe

ordinary care or, in other words, was culpable negligence on the part of those connected with the vessel. For it is well settled that it is no defense in an action for negligent injury that the negligence of a third person, or an inevitable accident, or an inanimate thing, contributed to cause the injury of the plaintiff, if the negligence of the defendant was the efficient cause of the injury. 16 Am. & Eng. Ency. p. 440, and cases there cited. Shearman & Redfield, in their work on Negligence, (3rd ed) section 10, give the general rule as follows: "Negligence may, however, be the proximate cause of an injury of which it is not the sole or immediate cause. If the defendant's negligence concurred with some other even (other than the plaintiff's fault) to produce the plaintiff's injury, so that it clearly appears that but for such negligence the injury would not have happened, and both circumstances are closely connected with the injury in the order of events, the defendant is responsible, even though his negligent act was not the nearest cause in the order of time." Thompson, in his work on Negligence, vol. 11, p. 1085, says: "Where an injury is the combined result of the negligence of the defendant, and an accident for which neither the plaintiff nor the defendant, is responsible, the defendant must pay damages, unless the injury would have happened if he had not been negligent." (Citing a number of cases in a note.) It is also another rule of the law of negligence that the employer is liable for the concurring negligence of himself and a fellow-servant of the injured employee to the same extent as if the injury had

been caused entirely by his own negligence. Grand Trunk Ry. Co. v. Cummings, 106 U. S. 700; Chicago R. I. & P. Ry. Co. v. Sutton, 63 Fed. R. 394; Chicago St. P. & K. C. Ry. Co. v. Chambers, 68 Fed. R. 148, 153, and cases there cited. The same rule prevails in admiralty. The Phenix, 34 Fed. R. 760. In the case of City of Clay Center v. Jevons, 44 P. 745, 2 Kan App. 568, it was decided that where the plaintiff had not been guilty of contributory negligence, and the injury complained of would not have resulted but for the negligence of the defendant, a recovery may be had, notwithstanding the primary cause of the injury may have been an accident for which the defendant was not responsible. In Benjamin v. Metropolitan St. Ry. Co. (Mo. Sup.), 34 S. W. 590, it was held that where the plaintiff was injured by the tilting of the cover of a manhole maintained by the defendant in the sidewalk in front of his premises, the fact that an independent contractor, who delivered coal to the defendant, negligently failed to replace the cover properly, will not relieve defendant from liability, if the negligence construction of the cover directly contributed to plaintiff's injury. Under these rules of law, the important inquiry, manifestly, is whether the act, by those in charge of the vessel, in placing the keg on the hatch-covers to dry at such close proximity to the hatchway was negligence, and whether such negligence concurred with the accidental tipping of the hatch-covers to produce the injury to the libellant.

The claimants owed a duty to libellant, as one of the stevedore's gang, to provide reasonable security against

danger to life or limb. *The Kate Camm*, 2 Fed. R. 241, 245; *The Helios*, 12 Fed. R. 732; *The Max Morris*, 24 Fed. R. 860; *The Guillermo*, 26 Fed. R. 921; *The Phenix*, 34 Fed. R. 760; *Crawford v. The Wells City*, 38 Fed. R. 47; *The Nebro*, 40 Fed. R. 31; *The Terrier*, 73 Fed. R. 265; *Leathers v. Blessing*, 105 U. S. 626. See, also, *The Frank & Willie*, 45 Fed. R. 494, where many of the authorities are cited. This duty is a personal one. *Railroad Co. v. Baugh*, 149 U. S. 368, 386; *The Pioneer*, 78 Fed. R. 600, 608. In *Clerk & Lindsell on Law of Torts*, pp. 370-376, it is stated that "the owner of premises owes a duty towards those whom he invites there to take care to see that the premises are in a fit state of repair, and if owing to his omission to exercise care in this respect, bricks, or tiles or other portions of the structure of a building fall upon them, he is liable; similarly will he be liable if he negligently leaves some chattel, such as a bale of goods, delicately poised in such a position as to be likely to fall and injure them. . . . To establish the defendant's liability, his negligence need not necessarily have been the immediate cause of the injury; provided it be a substantial part of the cause, he will be none the less liable because the injury may have been contributed to by the intervening negligence of a third person: *Abbot v. Macfie*, 2 H. & C. 744; *Clark v. Chambers*, 3 Q. B. D. 327."

While there is no direct testimony that the keg was placed on the hatch covers at such close and dangerous proximity to the hatchway by some one connected with the vessel, still the strong probabilities of the situation

and the natural and reasonable inference, to be drawn therefrom convince me that it was placed there by some person connected with the vessel. It is difficult to imagine how else it could have got there, for although every one of the stevedore's gang was called as a witness, not one of them deposed that he had placed it there; in fact, it did not belong to them; it was the property of the vessel and was used to contain drinking water. Nelson, one of the stevedores, testified that he saw a young man painting this identical keg the morning of the accident, "and set it there to dry on the hatches." The failure to call these two young men not only leaves us without their testimony on this point, but, under the rule of evidence heretofore referred to, raises a presumption against the claimants that their testimony, if produced, would have been unfavorable. As the witness Nelson has not been contradicted, I think it may safely be assumed that the keg was placed on the hatch covers to dry by the same "young man" who was engaged in painting it the morning of the accident and who was connected with the ship. Perhaps, the most significant circumstance, is the fact that it belonged to the ship. That this, under the circumstances of the case, was such negligence as to render the claimants liable for the consequential injury to libellant is, I think, clearly established by the testimony. It was certainly a dangerous place to put the keg to dry; it was dangerous to those working under the hatchway. The event itself demonstrates this feature of the case. The mere fact that loading was going on should have been suf-

ficient to indicate to those in charge of the vessel the danger of placing and leaving a small, empty keg, liable to be easily knocked over, on the hatch covers at such close proximity to the hatchway. The testimony shows that the hatch covers, three in number, were laid one on top of each other, and the topmost one was nearly level with the hatch combings. The risk, therefore, of the keg being tipped or knocked into the hatchway should have been apparent. And the negligence was all the more culpable, in that the hatch covers were somewhat curved, that is, there was "a little crown to the hatch," (testimony of the second mate) making the liability of a small, empty keg being tipped or overturned all the more imminent, and dangerous to those working under the forehatch. It was this negligence which was the real, efficient cause of the accident, and it was, in my estimation, such negligence that a man of ordinary experience and intelligence could, and should, have foreseen the results that probably might ensue. *Sherman & Redf. on Negligence, (3rd Ed.), sec. 10.*

Counsel for the claimants contends that there is not sufficient evidence of negligence to justify fastening any responsibility upon the claimants for the injury to the libellant, and that the latter has failed to prove any negligence on the part of those in charge of the vessel. It is undoubtedly true that, in actions for injury resulting from the negligent acts of others, the burden is on the plaintiff to make out a prima facie case of negligence, but it is also true that there is a class of cases where the act of injury itself, in connection with other facts and cir-

cumstances, sufficiently establishes that there was negligence to justify a judgment for damages. The general rule is well stated in *Scott v. London Dock Co.*, 3 Hurl. & Colt, 596, 601, by Erle, C. J., as follows: "There must be reasonable evidence of negligence. But where the thing is shown to be under the management of defendant or his servants, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendants, that the accident arose from want of care." The case was on appeal in the Exchequer Chamber from a decision in the Court of Exchequer in making absolute a rule to set aside the verdict for the defendants and for a new trial. It appeared that the plaintiff, in an action against the Dock Company for an injury to him by the alleged negligence of the Dock Company, proved that he was an officer of customs, and that, whilst passing, in the discharge of his duty, in front of a warehouse in the dock, six bags of sugar fell upon him. It was held this afforded reasonable evidence of negligence to be left to the jury.

In *Byrne v. Boadle*, 2 Hurl. & Colt. 721, it appeared that plaintiff was walking in a public street past the defendant's shop when a barrel of flour fell upon him from a window above the shop and seriously injured him. It was held that this was sufficient *prima facie* evidence of negligence for the jury, to cast on the defendant the burden of proving that the accident was not caused by his

negligence. Pollock, C. B., in delivering the opinion, said: "The learned counsel was quite right in saying that there are many accidents from which no presumption of negligence can arise, but I think it would be wrong to lay down as a rule that in no case can presumption of negligence arise from the fact of an accident. Suppose in this case the barrel had rolled out of the warehouse and fallen on the plaintiff, how could he possibly ascertain from what cause it occurred? It is the duty of persons who keep barrels in a warehouse to take care that they do not roll out, and I think that such a case would, beyond all doubt, afford prima facie evidence of negligence. . . . Or if an article calculated to cause damage is put in a wrong place and does mischief, I think that those whose duty it was to put it in the right place are prima facie responsible, and if there is any state of facts to rebut the presumption of negligence, they must prove them. The present case upon the evidence comes to this, a man is passing in front of the premises of a dealer in flour, and there falls down upon him a barrel of flour. I think it apparent that the barrel was in the custody of the defendant who occupied the premises, and who is responsible for the acts of his servants who had control of it; and in my opinion the fact of its falling is prima facie evidence of negligence, and the plaintiff who was injured by it is not bound to show that it could not fall, without negligence, but if there are any facts inconsistent with negligence it is for the defendant to prove them." In the case of *White v. France*, L. R. 2 Com.

Pleas. 308, it appeared that a bale of goods was left nicely balanced on the edge of a trap door and fell upon a passer-by. The occupier of the premises was held liable for negligence in this respect. In *Briggs v. Colt*, 4 Hurl. & C. 403, the plaintiff, going to a doorway of a house in which the defendant had offices, was pushed out of the way by his servant, who was watching a packing-case belonging to his master and was leaning against the wall of the house. The plaintiff fell, and the packing case fell on his foot and injured him. There was no evidence as to who placed the packing case against the wall or who caused it to fall. The court held that there was a *prima facie* case against the defendant to go to the jury. The same doctrine is thoroughly discussed and enunciated in the leading English case of *Kearney v. London etc. Ry. Co.*, L. R. 5 Q. B. 411; *s. c.*, affirmed, L. R. 6 Q. B. 759. The rule is the same in this country. An excellent statement of the law, as deduced both from the English and American cases, will be found in the case of *Howser v. C. & P. R. R. Co.*, 80 Md. 146. All of the leading cases on the subject are reviewed or referred to by the court. There it appeared that the plaintiff, while walking in a footpath along the roadbed of the defendant, but not upon its right of way, was injured by half a dozen cross-ties which fell upon him from a gondola car attached to a train passing on defendant's road. It was held that these facts gave rise to a presumption of negligence on the part of the defendant, and the ruling of the trial court that upon the pleadings and the evidence

given to the jury by the plaintiff (the defendant not having given any evidence), he was not entitled to recover, was reversed and a new trial ordered. In the course of a learned opinion, Roberts, J., said: "Whilst the general rule undoubtedly is, that the burden of proof that the injury resulted from negligence on the part of the defendant, is upon the plaintiff, yet in some cases, 'the very nature of the action may, of itself, and through the presumption it carries, supply the requisite proof.' Wharton on Negligence, Par. 421. Thus when the circumstances are, as in this case, of such a nature that it may fairly be inferred from them that the reasonable probability is that the accident was occasioned by the failure of the appellee to exercise proper caution which it readily could and should have done; and in the absence of satisfactory explanation on the part of the appellee, a presumption of negligence arises against it." The supreme court of California has also enunciated the same doctrine. *Pastene v. Adams*, 49 Cal., 87; *Dixon v. Plums*, 98 Cal. 384, 389. In *Pastene v. Adams*, it appeared that the defendants were lumber dealers, and that they had piled lumber carelessly so that the ends of the timber projected more than others into the gangways. While the plaintiff was walking close to the timbers, a stranger drove a team from the yard through the gangway to the street, and, in so doing, the wheel caught the end of the timbers and threw it down, and the plaintiff was injured thereby. In an action brought to recover damages caused by the falling of the lumber, it was held, substantially,

that if the lumber was thus carelessly piled up, the fact that it remained in that condition a long time before the injury and that the lumber was caused to fall by the negligence of a stranger were no defense; that the negligence of the defendant concurring with negligence of a stranger was the direct and proximate cause of the injury. This case is directly in point, not only on the general proposition of the claimant's liability for their negligence concurring with the accidental tipping of the keg, but also upon the point sought to be made by counsel for claimants that as the keg had lain on the hatch covers for some hours before the accident and nothing had happened, its presence there was not dangerous and was not negligence. In the case cited, it appeared that the lumber had been piled up and had lain in a dangerous condition for several months, yet the court held that this would make no difference. The case of *McCauley v. Norcross*, 155 Mass. 584, 30 N. E. Rep. 464 appears to be directly in point. The defendants were erecting a building. The plaintiff, a laborer employed by them, was working on the second floor of this building. On the third floor, some iron beams were so placed near an open hole in the floor that when the superintendent was passing by he inadvertently pushed one of the beams with his foot, which fell through the hole on the plaintiff below. It was admitted that the plaintiff was engaged in his regular occupation at the time, and that he was in the exercise of due care. The defendants requested the trial court to rule that, upon all the evidence, the plaintiff could not

recover. This the court refused to do, and submitted the case to the jury, which returned a verdict for the plaintiff. The only question presented by the bill of exceptions was whether, in any aspect of the case, there was sufficient evidence to go to the jury. The appellate court held that there was sufficient evidence of negligence to go to the jury and said: "Upon these facts, the jury might find that the iron beams were negligently so placed and left that one of them would be liable, from a slight inadvertent push of the foot of a passer-by, to fall through the hole. Being left in this condition for two or three days, the jury might infer a lack of due and proper superintendence. Allowing such things to be negligently left for so long a time in a position where they were likely or liable to be toppled over, and one of them to fall through the hole in the floor, would warrant a finding of negligence on the part of the superintendent in exercising superintendence." "If the beams were so left that one of them would be liable, as a natural consequence, from some intervening cause or agency, to be so moved that it might fall through the floor, the fact that an intervening act or agency occurred which directly produced the injurious result would not necessarily exonerate the defendants from responsibility. Superintendence is necessary in order to guard against injuries from such intervening and inadvertent acts of careless persons as are likely to happen and ought to be guarded against. The question is whether the moving of a beam was so likely to occur that it ought to have been provided

against by the superintendent. It might be found that the beams were negligently left near the hole in the floor, where they were likely or liable to be toppled over so that one them might fall through the hole, and thus injure some one below, and that this was the proximate cause of the plaintiff's injury, although some careless person came along and toppled them over." (Citing several cases.) See, also, *Johnson v. First Nat. Bank of Ashland*, 48 N. W. Rep. 712. But it is unnecessary to elaborate further on this feature of the case. The whole proposition upon the burden of proof is thus summed up in *Shearm. & Redf. on Negligence*, sec. 13 (3rd ed.): "The plaintiff is not bound to prove more than enough to raise a fair presumption of negligence on the part of the defendant, and of resulting injury to himself. Having done this, he is entitled to recover, unless the defendant produced evidence sufficient to rebut this presumption. Though it is not every accident that will warrant an inference of negligence, yet it is not true that no accident will suffice for this purpose. If the plaintiff proves that he has been injured by an act of the defendant, of such a nature that in similar cases, where due care has been taken, no injury is known to ensue, he raises a presumption against the defendant, which the latter must overcome by evidence either of his carefulness in the performance of the act, or of some unusual circumstance which makes it at least as probable that the injury was caused by some circumstance with which he had nothing to do, as by his negligence. Under the facts and circumstances

of this case, and the authorities referred to, it is my opinion that the act of placing and of leaving the keg, previously described, on the hatch covers so close to the hatchway that it was liable to be knocked into the hold, and was in fact tipped over and did roll into the hatchway through an intervening cause or agency, was such negligence as to render the claimants, in view of the duty they owed the libellant as a stevedore on board the vessel, liable in damages for the injuries suffered thereby.

It is strenuously contended by counsel for claimants that the injury should be attributed to an inevitable accident, as the stepping upon and tipping of the hatch covers, which caused the keg to roll into the hatchway, was purely accidental, the injurious results of which, to libellant, could not be reasonably foreseen or apprehended. But this defense cannot be allowed where the negligence of the claimants has concurred with the accident which caused the injury to libellant. "In order to prove that an accident was inevitable, it is not always enough to show that, under the circumstances existing at the time, it could not be avoided. It must also be the fact that the defendant was not in fault in bringing about any of those circumstances." *Shearm. & Redf. on Neg.*, sec. 5 (3rd ed.) As was said in *Austin v. New Jersey Steamboat Co.*, 43 N. Y. 75; s. c. 3 Am. Rep. 663: "A party cannot avail himself of the defence of 'inevitable accident,' who by his own negligence gets into a position which renders the accident inevitable." Under the facts of this case, the defense of inevitable accident cannot

avail the claimants. *Bridges v. North London Ry. Co.*, L. R. 62 B. 377, 391.

We next take up the question of damages. That the libelant was very seriously injured is clearly established by his own testimony and that of the physicians who testified. The severity of his injuries is not disputed. His skull was fractured by the blow, resulting in paralysis and permanent injury of a very grave character. It was testified that there was also a possibility of imbecility or insanity supervening as a consequence of the injuries he had sustained, and that his earning capacity had been entirely destroyed with no prospect of recovery. When injured he was 29 years of age and in good health. He was unmarried and his earnings amounted to three dollars a day as stevedore and longshoreman. I think that, under all the circumstances of the case, and, particularly, in view of the fact that his earning capacity has been destroyed, the libelant should be allowed the gross sum of \$6,000. A decree in that amount will be entered in favor of the libelant, with costs.

[Endorsed]: Filed April 26th, 1897. Southard Hoff, man, Clerk.

UNITED STATES OF AMERICA.

District Court of the United States of America, for the Northern District of California.

At the stated term of the District Court of the United States of America, for the Northern District of California, held in the city of San Francisco, on Thursday, the third day of June, in the year of our Lord one thousand eight hundred and ninety-seven. Present: The Honorable THOMAS P. HAWLEY, District Judge for the District of Nevada, assigned to hold the District Court for the Northern District of California.

IN ADMIRALTY.

JENS P. JENSEN,

Libelant,

vs.

SHIP "JOSEPH B. THOMAS," etc.

SAMUEL WATTS, et al.,

Claimants.

Decree.

This cause having heretofore been heard on the pleadings and proofs, and the advocates for the respective par-

ties having been heard, and due deliberation being had in the premises,

It is now ordered, adjudged and decreed that Jens P. Jensen, the libelant herein, do have and recover against the said ship "Joseph B. Thomas," and Samuel Watts and others, the claimants herein of said ship, the sum of six thousand dollars, damages by him sustained, by reason of the matters and things in his said libel alleged, together with his costs taxed at one hundred and ninety dollars, amounting in all to the sum of six thousand one hundred and ninety dollars;:

It is further ordered, adjudged and decreed that unless an appeal be taken from this decree within the time limited by law and the rules and practice of this court, (after due notice of this decree to the proctors of claimants,) that the stipulators for costs and value herein cause the engagements of their stipulations to be performed, or show cause within four days after the expiration of said time to appeal, or on the first day of jurisdiction thereafter, why execution should not issue against their goods, chattels and lands, according to their said stipulations.

THOMAS P. HAWLEY,

Judge.

[Endorsed]: Filed June 3d, 1897. Southard Hoffman,
Clerk.

*In the District Court of the United States in and for the
Northern District of California.*

IN ADMIRALTY.

JENS P. JENSEN,

Libelant,

vs.

SHIP "JOSEPH B. THOMAS," etc.

SAMUEL WATTS, et al.,

Claimants.

Notice of Appeal.

To Jens P. Jensen, and Frank P. Prichard, his proctor:

You are hereby notified that Samuel Watts et al., claimants of the ship "Joseph B. Thomas," intend to and hereby do appeal from the final decree of the District Court of the United States in and for the Northern District of California, entered in the above entitled action, on the 3d day of June, 1897, to the United States Circuit Court of Appeals for the Ninth Circuit.

Dated, San Francisco, June 4, 1897.

ANDROS & FRANK,

Proctors for Claimants.

Service of a copy of the foregoing notice of appeal acknowledged this — day of June, 1897.

Proctor for Libelant.

[Endorsed]: Filed June 4th, 1897. Southard Hoffman Clerk.

In the District Court of the United States in and for the Northern District of California.

IN ADMIRALTY.

JENS P. JENSEN,

Libelant,

vs.

SHIP "JOSEPH B. THOMAS," etc.

SAMUEL WATTS, et al.,

Claimants.

Assignment of Errors.

And now comes Samuel Watts and others, claimants in the above entitled cause, and assign errors in the decision and decree of said District Court therein as follows:

1. The Court erred in finding that, under the facts of this case as disclosed by the evidence, the libelant was entitled to a decree against said ship "Joseph B. Thom-

as," or the claimants thereof, in the sum of six thousand dollars.

2. The Court erred in finding that said libelant was, under the facts of this case as disclosed by the evidence, entitled to recover against said ship "Joseph B. Thomas," or the claimants thereof, any damages whatsoever.

3. The Court erred in entering a decree in favor of said libelant and against said claimants.

ANDROS & FRANK,
Proctors for Claimants and Appellants.

[Endorsed]: Filed June 4th, 1897. Southard Hoffman,
Clerk.

*In the District Court of the United States in and for the
Northern District of California.*

IN ADMIRALTY.

JENS P. JENSEN,

Libelant,

vs.

SHIP "JOSEPH B. THOMAS," etc.

SAMUEL WATTS, et al.,

Claimants.

Petition for Appeal.

And now, by their proctors, Andros & Frank, come Samuel Watts et al., claimants of said ship "Joseph B. Thomas," and having filed with the clerk of the District Court of the United States in and for the Northern District of California with their petition for an appeal an assignment of errors, pray this Honorable Court to allow an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from the final decree of the District Court in the above entitled cause, entered on the 3d day of June, 1897.

Dated at San Francisco, June, 1897.

ANDROS & FRANK,

Proctors for Claimants.

[Endorsed]: Filed June 4th, 1897. Southard Hoffman, Clerk.

(Style of Court—Title and Number of Cause.)

Order Granting Appeal.

On petition of Samuel Watts et al., claimants of the ship "Joseph B. Thomas," in the above entitled cause, it appearing that said petitioners have filed in the clerk's office of the District Court for the Northern District of California, an assignment of errors in said cause, it is or-

dered that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the final decree entered in the above entitled action on the 3d day of June, 1897, in said District Court, be, and the same is, allowed.

Dated at San Francisco this 4th day of June, 1897.

THOMAS P. HAWLEY,
Judge.

[Endorsed]: Filed June 4th, 1897. Southard Hoffman, Clerk. By J. S. Manley, Deputy Clerk.

Acknowledgment of Service.

The Western Union Telegraph Company. • •
• • • • • • • • • •

1062

Received at San Francisco, Cal.

Ch 325 Gn-Ws 19 Paid. 5:30 P.

Germantown, Pa., June 9, 1897.

Andrews and Frank,
320 Sansome St., San Francisco.

Service of notice, petition, allowance, appeal and assignment of errors acknowledged this 9th day of June, eighteen ninety seven.

FRANK P. PRICHARD.

[Endorsed]: Filed June 10th, 1897. Southard Hoffman, Clerk. By J. S. Manley, Deputy Clerk.

(Style of Court—Title and Number of Cause.)

Bond on Appeal.

Know All Men by These Presents, that we, Samuel Watts, M. C. Mehan, W. J. Lermond, C. H. Washburn, J. T. Berry, William F. Hall, J. B. Thomas, C. C. Black, and J. F. Chapman, as principals, Joseph G. Levensaler and Louis T. Snow, as sureties, are held and firmly bound unto Jens P. Jensen in the sum of five hundred dollars, to be paid to the aforesaid Jens P. Jensen, his heirs, executors, administrators or assigns; to which payment well and truly to be made we bind ourselves, and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this 4th day of June, 1897.

Whereas, the above named Samuel Watts and others have appealed to the United States Circuit Court of Appeals, for the Ninth Circuit, from a decree in favor of the above named libelant, made and entered on the 3d day of June, 1897, in the above entitled action by the District Court of the United States for the Northern District of California, praying that said decree may be reversed.

Now, therefore, the condition of this obligation is such that if the above named appellants shall prosecute their appeal to effect, and shall answer all damages and costs

if they fail to make their appeal good, then this obligation shall be void, otherwise the same shall remain in full force and effect.

J. F. CHAPMAN. [Seal.]

SAMUEL WATTS.

M. C. MEHAN.

W. J. LERMOND.

C. H. WASHBURN.

J. T. BERRY.

WILLIAM F. HALL.

J. B. THOMAS.

C. C. BLACK. [Seal.]

By their attorney in fact,

J. F. CHAPMAN. [Seal.]

J. G. LEVENSALER. [Seal.]

LOUIS T. SNOW. [Seal.]

Witness: JOHN FOUGA.

United States of America, }
Northern District of California. } ss.

Joseph G. Levensaler and Louis T. Snow, being duly sworn, each deposes and says that he resides in the Northern District of California, and that he is worth the sum of five hundred dollars over and above all his just debts and liabilities and property exempt from execution.

J. G. LEVENSALER.

LOUIS T. SNOW.

Subscribed and sworn to before me, this 4th day of June, 1897.

JOHN FOUGA,

Commissioner U. S. Circuit Court, Northern District of California.

This bond approved as to form and amount and sufficiency of sureties.

Dated at San Francisco, June 4, 1897.

THOMAS P. HAWLEY,

Judge of the United States District Court for the District of Nevada, assigned to hold the United States District Court for the Northern District of California, and holding the same.

[Endorsed]: Filed June 4th, 1897. Southard Hoffma
Clerk.

Clerk's Certificate.

United States of America, }
 Northern District of California. } ss.

I, Southard Hoffman, clerk of the District Court of the United States of America, for the Northern District of California, do hereby certify that the foregoing and hereunto annexed one hundred and sixty-eight pages, numbered from (1) to (168) inclusive contain a full, true and correct transcript of the record in said District Court in the cause entitled "Jens P. Jensen, Libelant, vs. The Ship 'Joseph B. Thomas,' her tackle, apparel and furniture, Respondent," numbered 10452, made up pursuant to rule 52 of the rules of the Supreme Court of the United States of America.

And I further certify that the cost of said record, amounting to \$96.70 was paid by the appellant.

Witness my hand and seal of said District Court, at San Francisco, this 26th day of June, A. D. 1897.

[Seal]

SOUTHARD HOFFMAN,

Clerk.

[Endorsed]: No. 385. In the United States Circuit Court of Appeals for the Ninth Circuit. Ship "Joseph B. Thomas," Samuel Watts, et al., Claimants, Appellants, vs. Jens P. Jensen Appellee. Transcript of Record. Appeal from the District Court of the United States for the Northern District of California.

Filed July 8th, 1897.

F. D. MONCKTON,
Clerk.

